A HANDBOOK
OF
PUBLIC INTERNATIONAL LAW

T. J. LAWRENCE

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BY

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PREFACE TO THE FIRST EDITION.

THIS little book owes its origin to the exigencies of tuition. As a teacher of International Law at Cambridge, I found that my pupils were almost unanimous in testifying to the benefits they derived from the syllabus of my lectures which it was my custom to print and distribute among them at the commencement of every course. The kindness with which these outlines were received has encouraged me to revise them carefully, and publish them as a connected whole, with many alterations and additions. I trust that in their present form they will be useful to students, especially those who are compelled to read the subject at a distance from the great centres of legal education, and without the assistance of oral instruction; and I am not without hope that teachers will find them helpful in the preparation of their lectures and discourses. I do not for one moment wish to suggest that the book can be used as a sub-

stitute for the comprehensive treatises on International Law with which the last half-century has enriched our legal literature. It is rather intended as a guide to them. Their chief defect is to be found in their arrangement. And in order to help the student to overcome any difficulties he may have experienced on this score, I have endeavoured to deal with the subject in a systematic manner, giving clear and definite divisions based on intelligible principles, and shewing throughout a correlation of parts, which may help to a proper understanding of the whole. The book is in no sense an analysis of any larger work; but it claims to be an analysis of Public International Law. Little that is new will be found in it. Indeed no worse condemnation could be written of a treatise on existing international relations than that it was full of rules which had never seen the light before. But I trust that some modifications of generally received doctrines, and some restatements of historical and legal propositions, will find favour with those competent to judge, as being fair inferences from the events of the present century, and fair applications of the results of recent research. International Law is fortunately a living thing; and it behoves even the humblest of its expositors to watch its growth, and set forth its changes and developments. But on the other hand there is danger lest new rules should be

laid down, or old ones modified, before there is sufficient evidence of a permanent alteration in the practice of states. I trust I have nowhere laid myself open to the charge of mistaking the puff of a passing breeze for the steady current of international opinion. When old rules no longer receive the deference they once commanded, and no new rules have as yet met with general acceptance, I have not hesitated to say that the law is doubtful, though I have generally indicated the direction which it seems to me that change is taking. The uncertainty of International Law is often greatly exaggerated; but nothing is gained by attempting to represent it as more fixed and settled than in some of its chapters it really is.

With a view to the convenience of students I have added at the end of every chapter a few questions on the subject matter, and a few directions as to reading. In the latter I have referred only to English books, and among them chiefly to such well-known text-books as can be easily purchased, or consulted in any good law library. It is not, of course, supposed that an ordinary reader will look up all the references given. He will probably possess either Mr Hall's excellent *International Law*, or the scarcely less useful edition of Wheaton's *Elements of International Law* edited by Mr A. C. Boyd. These are referred to throughout at the commencement of

all the "Hints as to Reading"; and when he desires further information on any point, he will discover where to get it by running his eye over the remainder of the directions given. He will not, however, find references to works intended rather for practitioners than for students. Moreover the discussions as to the definition and nature of International Law, which must of necessity come first in logical order, may well be deferred to last in the order of time. It is almost impossible to follow and appreciate an argument on these points before a competent knowledge has been gained of the system whose boundaries and character it is sought to fix.

T. J. LAWRENCE.

DOWNING COLLEGE,
May 25, 1885.

PREFACE TO THE SECOND EDITION.

THE adoption of this book by the Admiralty for the use of Officers of the Royal Navy has rendered necessary a second edition within a few weeks of the publication of the first. No material changes have been made in the text; but here and there alterations and amplifications have been introduced, chiefly with a view to greater clearness of expression. Naval and military officers must constantly need a clear and brief statement of the leading principles and rules of International Law. It is hoped that they, as well as students and teachers, will find here the outline they require.

T. J. LAWRENCE.

DOWNING COLLEGE,
July 6, 1885.

CONTENTS.

PART I.

INTRODUCTORY.

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

PART II.

THE LAW OF PEACE.

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

PART III.

THE LAW OF WAR.

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

CHAPTER VI.

PART IV.

THE LAW OF NEUTRALITY.

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

CHAPTER VI.

PART I.

INTRODUCTORY.

CHAPTER I.

THE DEFINITION AND NATURE OF INTERNATIONAL LAW.

A. The Definition of International Law.

International Law may be defined as *The aggregate of the rules which determine the conduct of the general body of civilised States in their dealings with each other and each other's subjects.* There is still much dispute as to the nature of International Law, its methods, its limits, and its relation to the science of Ethics. All attempts to define it are coloured by the views held with regard to these matters by the individual who frames the definition. That which we have just given proceeds upon the theory that it is the chief business of students of International Law to find out the rules actually observed by States in their mutual intercourse, and to classify and arrange them by referring them to the fundamental princi-

ples on which they are based. We must note with regard to it that it refers to

(1) Rules which *are* generally observed, not to rules which in the opinion of those who propound them *ought to be* generally observed.

Whether a rule is morally right or morally wrong, it forms part of International Law if it is generally accepted and acted upon.

(2) Rules which are generally observed by *civilised* States, not rules which are generally observed by *Christian* States only.

Modern International Law grew up among a group of Christian States, and was largely influenced by Christian views of conduct; but inasmuch as it is now accepted by a few Non-Christian States, such as Turkey and China, we cannot speak of it as a system peculiar to Christian nations. It is, however, peculiar to civilised peoples. No utterly barbarous tribe could come under it; but the exact amount of civilisation necessary cannot be reduced to definition.

(3) Rules which are generally observed by civilised States in their dealings with *individuals belonging to other States*, as well as rules which are generally observed by civilised States in their dealings with *other States*.

Each State in its dealings with foreigners is governed partly by rules which it is free to

settle for itself at its own discretion, and partly by rules which are determined by the general agreement of civilised powers. The former do not belong to International Law, the latter are part of it. In many cases of maritime capture, for instance, States deal directly with private individuals belonging to foreign nations according to rules which have received the express or tacit consent of all civilised powers.

The name, International Law, is comparatively modern. Till the present century the science was called the Law of Nations, or the Law of Nature and Nations. But the newer designation is better, because it avoids the danger of confusing our subject with the Roman *Jus Gentium*, and points unmistakably to its character as a system of rules binding *between* States in their mutual intercourse.

B. The Nature of International Law.

In discussing the nature of International Law we have to consider

(1) Whether we can deduce it from certain principles of universal authority, discoverable by human reason, but existing independently of any arrangements made by men, or whether it is generalised from the practices of States in their mutual dealings.

The founders of modern International Law

were disciples of the first theory, owing to their belief in a Law of Nature applicable to States; but they did not distinguish it clearly from the second, and their mixed methods of thought have often been followed by succeeding writers. It can, however, be shewn that

(*a*) The theory of a Law of Nature is false historically, and untenable philosophically in that it confounds together the actual and the ideal.

(*b*) Those who believe in it differ greatly as to the character and commands of the so-called Law of Nature.

(*c*) States appeal in their controversies not to innate principles and absolute rights, but to rules which can be proved to have been acted upon previously in similar circumstances by all or most civilised nations.

We, therefore, hold that the rules of International Law are to be discovered by observation of the practices of States in their mutual dealings, and that its method is mainly historical and inductive. But ethical considerations are not to be altogether banished, because sometimes there are two or more currents of practice; and when practice is diverse law is doubtful. In such cases the opinions of jurists should be given in favour of those rules which

seem most just and humane. Moreover new cases often arise unlike any that have been decided before. New rules are then wanted, and in their creation moral principles should be allowed preponderating influence. International Law advances by means of the growth of opinion; and to its students belongs the responsibility of influencing the minds of men in favour of righteousness in all transactions between States, though they must never be led by moral enthusiasm into declaring a good rule to be law before it has met with general acceptation.

(2) Whether International Law is, properly speaking, law at all.

Most of its rules lack a definite sanction, and therefore their claim to be considered laws is generally denied by English thinkers, who accept Austin's account of Law, and place them among "the positive moral rules which are laws improperly so called." It should, however, be noted that

(*a*) The rules of maritime capture have very definite sanctions, and are therefore laws according to the strictest Austinian canons.

(*b*) The Austinian definition of Law is not the only one possible. If we follow it in the stress it lays upon superior force, regarding laws as commands which man

> is compelled to obey by fear of a definite evil, we must hold that most of the rules of International Law are not laws in the strict sense of the word. If on the other hand we lay stress rather upon the notion of order, regarding laws as commands which regulate conduct, then we may use the term International Law with perfect propriety.

The conclusion then that we have arrived at with regard to the nature of International Law is that it must be looked upon as in the main a collection of positive rules actually observed among civilised States, but that whether we call it Law or not is a matter of nomenclature, of no very great importance as long as we have just ideas of its character, its methods, and its immense value as an instrument of human progress.

Questions.

1. Define International Law, and discuss the propriety of the name.

2. To what kind of States is International Law applicable?

3. What is the proper method to be followed in the study of International Law?

4. Examine the theory of a Law of Nature.

Hints as to Reading.

Most of the questions discussed in this chapter are

dealt with by Hall in the Introductory Chapter and in Appendix I. of his *International Law.* Boyd's edition of Wheaton's *International Law,* Part I. Chapter I., should be read by those who wish to trace the various versions of the theory of a Law of Nature given by the great writers whose opinions are set forth therein. Most books on International Law commence with some account of its nature, and some attempt to define it. The best account of the Law of Nature and its relation to International Law is to be found in Chapters III. and IV. of Maine's *Ancient Law.* Lectures I. and V. of Austin's *Jurisprudence* set forth the commonly received views as to the nature of Law in general and International Law in particular. Comments upon them will be found in the works of Maine, Holland, Clark, Markby, and other writers on Jurisprudence. Sir J. F. Stephen discusses International Law in his *History of the Criminal Law,* Chapter XVI. His views are examined in the first of Lawrence's *Essays on some Disputed Questions in Modern International Law,* and amplified by his son, Mr J. K. Stephen, in his *International Law and International Relations.*

CHAPTER II.

THE HISTORY OF INTERNATIONAL LAW.

A. Periods.

There are few tribes so barbarous as not to have some customary rules for their guidance in dealing

with their neighbours; but International Law, as we understand it, is a system which has grown up among the nations of Europe, and has extended itself to all civilised communities outside the European boundaries. In its modern form it is scarcely three hundred years old; but rudimentary germs of it are to be found in remote antiquity. We may divide its history into three periods, each of which witnessed the application of a definite principle to the mutual relations of States.

(1) From the earliest times to the establishment of the Roman Empire.

(2) From the establishment of the Roman Empire to the Reformation.

(3) From the Reformation to the present time.

Each of these periods gradually merges into its successor, and each is marked by the supremacy of a fundamental principle, which is for ages accepted without doubt or hesitation, is then questioned as it becomes less applicable to altered circumstances, and is finally superseded by a new principle adapted to the changed state of international affairs.

B. Principles.

We will now state the principles referred to above, and shew how each forms the basis of International Law in the period to which it applies.

(1) The principle of the first period was *That States as such had no mutual rights and obligations, but that tribes which were con-*

nected by blood-relationship owed each other certain duties.

Kinship was the basis of all ancient society; and as it settled the condition of the individual within the State, so it prescribed and limited the duties of the State to other States. Outside the circle of real or supposed blood-relationship there was nothing between men. Thus we find in the history of ancient Greece that

(*a*) Barbarians were regarded as intended by nature to be slaves, and no relations but those of hostility were accounted possible with them.

(*b*) Among peoples of Hellenic descent there was a rudimentary International Law, which laid down that those who died in battle were to be buried, that those who resorted to the public games were not to be molested, and a few other rules of a similar kind.

(*c*) A code of maritime law grew up among the seafaring Greek peoples, and was afterwards embodied to some considerable extent in the legislation of the Roman Emperors.

With regard to Rome no satisfactory evidence has been produced that the Republic regarded foreign nations as possessed of any rights against it, other than those arising from

special compact. The enforcement of discipline in its armies, and the ceremonial for declaring war prescribed by the *Jus Feciale*, sprang from the Roman love of order, rather than from any idea of international duty.

(2) The principle of the second period was *That there was somewhere a common superior whose decisions were binding upon States.*

When the Roman Emperors ruled the greater portion of the then civilised world the notion of universal sovereignty arose, and became one of the most deeply rooted ideas of mankind. We have to note with regard to it that

(*a*) Till the Roman Empire sunk into decay, idea and fact corresponded. The disputes of subordinate princes and commonwealths were settled by appeals to Cæsar. What he commanded was law in international as well as in municipal affairs.

(*b*) The revived or Holy Roman Empire of Charlemagne and his successors claimed universal supremacy, and men still held the claim to be reasonable. As the Papacy grew stronger, and the Empire became more and more Germanic, the Popes set up a rival claim to world-wide dominion. But the rise of the notion of territorial sovereignty, the gradual cur-

tailment of the Empire, and the corruptions of the Papacy, tended to weaken the theory that States must of necessity have a common superior.

Belief in the principle of universal supremacy was shattered by the Reformation. The Pope and the Emperor were compelled to take sides in a great international conflict, which, according to the hitherto dominant theory, ought to have been settled by the authority of one, or the other, or both of them. At the same time the discovery of America raised a host of new problems which existing rules were unable to solve. There was great danger of international anarchy, but fortunately a new system arose in time on the ruins of the old.

(3) The principle of the third period is *That States as such have mutual rights and obligations, which do not rest for their authority upon the commands of any common superior.*

The destruction of the old international order, and the need of some solution of the questions which arose from the discovery of the New World, set many able men on the endeavour to find some generally acceptable foundation for a new order. By far the most successful of these was Hugo Grotius, who published his *De Jure Belli ac Pacis* in 1625. He may be regarded as the founder of modern International Law. His reasoning was based

upon the proposition that though States have no common superior, nevertheless they are bound to one another by mutual duties, which are determined by a Law of Nature and by general consent. In elaborating his system he borrowed largely from the Roman *Jus Gentium* under the mistaken impression that it contained an international code founded upon views like his own of Nature and Nature's Law. Statesmen and jurists adopted his principles; and they became the foundation of the public law of modern Europe. We must note that

(*a*) The theory of a Law of Nature is now falling into discredit, and the express or tacit consent of States to be bound by the rules of International Law is generally regarded as the sole and sufficient foundation for their authority.

(*b*) The age of Grotius believed implicitly in Natural Law, and would probably have declined to accept his humanising precepts, had they not been regarded as portions of a code which was held to possess a binding force independent of human institution.

Since the time of Grotius International Law has advanced along the lines laid down by him. Some of his rules were never adopted; others were once acted upon, but have been dropped in the course

of progress; many were in a rudimentary condition, and have undergone the process of development; and the growth of civilisation has caused the elaboration of large bodies of new rules to meet new wants and changed circumstances. But in its broad outlines the Grotian system still remains; and though, as we shall see when we come to Part II., Chapter IV., one of its fundamental principles shews signs of giving way, in other respects it seems likely to command the assent of civilised mankind for a long time to come.

QUESTIONS.

1. Into what periods would you divide the History of International Law? Give the reasons which cause you to make the divisions you adopt.

2. Shew that the principle of kinship was the foundation of international relations in ancient society.

3. Account for the break up of the European State System and international order at the time of the Reformation.

4. What were the fundamental propositions of the *De Jure Belli ac Pacis* of Grotius? Shew how they became the foundation principles of modern International Law.

HINTS AS TO READING.

The arrangement of periods given in this Chapter will not be found in any other book on International Law. Hall's Appendix I., and Wheaton's first

Chapter contain some account of the theory of Grotius, and in Chapter IV. of Maine's *Ancient Law* its connection with Roman Law and the so-called Law of Nature is well brought out, though more recent research seems to call for the modification of some of the views therein expressed. Chapter V. of the same book, and Chapter III. of the same author's *Early History of Institutions* shew how kinship was the basis of early society. In Grote's *History of Greece*, Part II. Chapter II., will be found a description of some of the rudimentary international usages of the Greek communities. Chapters VII. and XV. of Bryce's *Holy Roman Empire* shew the character of the power exercised by the Pope and the Emperor on the international affairs of mediæval Europe. The fourth of Lawrence's *Essays* is an attempt to estimate the nature and extent of the influence of Grotius on his own and succeeding ages. Book I., Chapter II. of the edition of Manning's *Law of Nations* edited by Sheldon Amos gives a brief outline of the history of International Law, and a similar outline will be found in Chapter I. of Sir S. Baker's edition of Halleck's *International Law*. Wheaton's *History of the Law of Nations* is most valuable as a book of reference.

CHAPTER III.

THE SUBJECTS OF INTERNATIONAL LAW.

A. Subjects.

The subjects of International Law do not all stand

on the same footing with regard to it. Its rules govern their mutual relations in a greater or less degree, according to the circumstances of each case. They may be classified as follows:

(1) Sovereign States.

A State may be defined as *A political community, the members of which are bound together by the tie of common subjection to some central authority, whose commands the bulk of them habitually obey.* It is *sovereign* or *independent*, if its government does not render habitual obedience to any earthly superior. It is *a subject of International Law* if it is one of the States among whom the accepted system of international rules grew up, or if it has been received into the family of nations, that is to say into the number of those political communities which possess the rights and are subject to the obligations conferred by International Law on Sovereign States. The Sovereign States that are subjects of International Law must be divided into two classes.

(*a*) The Great Powers. They are rapidly gaining in many important matters a position of primacy, which we shall consider in Part II. Chapters I. and IV.

(*b*) Ordinary Independent States. They possess all the ordinary rights given by International Law to Sovereign States,

but do not share the authority in supervising and altering existing arrangements claimed by the Great Powers.

All independent political communities in which the supreme authority speaks for the whole State in its dealings with other States, are alike in the eye of International Law, whether they are internally organic wholes, or Unions, or Federal States. If they belong to the family of civilised nations, they are subject to the law in the fullest degree, their external relations being entirely governed by it.

(2) Part-sovereign States.

A Part-sovereign State, in the sense given to the term in International Law, is *A political community in which part of the powers of sovereignty are exercised by the home government, and part are vested in some other political body, or left in abeyance altogether.* Such communities come under International Law only with regard to that portion of their external affairs in which they can act for themselves. They may be divided into three classes.

(*a*) Communities under a Suzerain. The Suzerain is the State possessing the powers of external sovereignty which the home government of the community in question may not exercise. Thus Great

Britain possesses suzerain rights over the Transvaal Republic, because the latter is forbidden by the treaty of 1884 to conclude any treaties with foreign powers, except the Orange Free State, without the consent of the British government.

(*b*) Members of a System of Confederated States (Staatenbund). In these Confederations each State retains some of the powers of external sovereignty, while the remainder are exercised by the central authority of the Confederacy. The German Confederation from 1815 to 1866 is a good example.

(*c*) Communities which are deprived of some of the powers of sovereignty by Public Law. Of this kind are permanently neutralised States, like Belgium. Their neutrality is guaranteed on condition that they never make war except to defend themselves from actual attack. Their governments are thus considerably restricted in the conduct of their external affairs.

(3) Belligerent Communities not being States. These are communities which are endeavouring to assert their Independence by war, but are not yet recognised as Sovereign States. They often obtain what is called

Recognition of Belligerency, the effect of which is to endow them with the rights, and impose upon them the obligations, of independent States, so far as the conduct of hostilities is concerned, but no further. Their ships of war, for instance, are accounted lawful cruisers, but their governments cannot negotiate formal treaties, or accredit diplomatic ministers. In Part III. Chapter I. will be found an account of Recognition of Belligerency.

(4) Corporations.

These may be considered under two heads:

(*a*) Ordinary Corporations. As owners of property they may come under the laws of belligerent capture.

(*b*) Privileged Corporations. A number of great trading companies have been allowed by the States under whose laws they were incorporated, to acquire territory in distant lands, to exercise dominion therein, and to make peace and war with native princes. We may instance the old English East India Company, and the present North Borneo Company. Such bodies are subjects of International Law in an extraordinary and abnormal manner. As regards the natives they are States, as regards their own governments they are Subjects.

(5) Individuals.

They may become subjects of International Law in a limited degree as owners of property captured in war.

B. The Admission of New Subjects.

The admission of new subjects within the pale of International Law takes place in two ways:

(1) When a State hitherto accounted barbarous is received into the family of nations by a formal act.

Such was the case when in 1856 Turkey was by the Treaty of Paris admitted to participate in the advantages of the Public Law of Europe. No State is likely to gain admission unless it possesses

(*a*) A certain amount of civilization. On this point it is impossible to lay down any definite rule. Each case must be judged on its own merits by the powers who have to deal with it.

(*b*) A fixed territory. International Law assumes that sovereignty is territorial. Nomadic tribes would therefore be unable to comply with the demands it makes upon its subjects.

(*c*) A certain size and importance. A small and unimportant community, lying apart from any of the main currents of

human affairs, would be too insignificant to be noticed.

The Great Powers, or some of them, generally take the lead in admitting States such as we have described into the family of nations.

(2) When a civilised political community, which has cut itself adrift from the body politic to which it formerly belonged and started a separate existence of its own, receives Recognition of Independence from other States.

Such Recognition is express or implied. The former is given by special treaty stipulations, the latter when conventions are negotiated, or other acts done, such as independent States alone can be parties to. By recognising a new community no just ground of offence is given to any State from which it may have revolted, if it

(*a*) Has an organised Government, carried on in civilised fashion, and capable of dealing with other States in the manner prescribed by International Law.

(*b*) Possesses a fixed territory.

(*c*) Has actually or virtually brought to an end in its own favour the contest between itself and the parent State.

Recognition while a serious conflict is still going on is an act of unfriendly Intervention, which the parent State may, if it chooses, make into a cause of

war. A colony or province, which obtains and keeps a *de facto* Independence, is sure to receive Recognition from all powers sooner or later, the quickness or tardiness of each being often determined by its political sympathies. Recognition by one State, or a body of States, in no way binds others; but when the Great Powers agree to recognise a community, the smaller States follow their lead.

Questions.

1. Define a State. What States are subjects of International Law?

2. Distinguish between the various kinds of Part-sovereign States, and shew how far their subjection to International Law extends. Give an example of each kind.

3. Point out how corporations and individuals may become subject to International Law.

4. What is Recognition of Independence? Under what circumstances may it be given without offence?

Hints as to Reading.

Part I. Chapter I., and Part II. Chapter I. of Hall should be read. In Wheaton Chapter II. of Part I. bears upon our present subject, but the student should remember that many of the political and territorial arrangements therein mentioned have been changed not only since the text was written, but since Boyd's edition was published. Sir Travers

Twiss in Volume I. Chapters II—V., of the new edition (1884) of his *Law of Nations* brings information on these points down almost to the date of publication. But every one who wishes to have a real living knowledge of International Law, must observe the changes that are continually going on around him, and follow carefully the international controversies of his time. The best account of the true doctrine of Recognition will be found in the three letters on that subject in *Letters by Historicus on some Questions of International Law.*

CHAPTER IV.

THE SOURCES AND DIVISIONS OF INTERNATIONAL LAW.

A. Sources.

By the sources of International Law we mean the places where its rules are first found. No rule can have authority as law unless it has been generally accepted by civilised States; but before the process of acceptation there must be a process of formation. In tracing rules up to their historical beginnings we discover five sources whence they arise. These are

(1) The Works of great Publicists.

There are a number of writers on International Law, beginning with Gentilis and Grotius and ending with the leading Publicists of our own day, whose works have influenced,

and do still influence, the practice of States, and whose published opinions are appealed to in international controversies. Their views are valuable in proportion to their knowledge, ability, and impartiality. They apply admitted principles to doubtful points, and thus often evolve rules which get embodied in the practice of States. On the other hand their opinions may be overridden by contrary usage.

(2) Treaties.

With regard to these considered as sources of international rules, there is a wide difference of opinion. A school of Continental writers argue as if treaties, or, rather a certain number of them arbitrarily selected, formed a *corpus* of International Law. On the other hand most British and American publicists are disposed to lay little stress upon them. In order to arrive at just conclusions it is necessary to distinguish between different kinds of treaties. They may be classified as follows:

(*a*) Treaties assented to by all or nearly all civilised States, and avowedly making changes in the law, or laying down new rules. These are important in proportion to the number of States which sign them, and the length of time during which their provisions are observed. If they are

accepted by all civilised States they become legislative acts. If, without this formal acceptation by all powers, their rules get embodied in universal practice, they are sources of International Law. Such treaties are very rare. The Declaration of Paris of 1856, and the Geneva Convention of 1864, may be given as examples.

(*b*) Treaties declaratory of the law. These, too, are rare; and sometimes rules which one party regards as declaratory, the other considers to be new rules. This was the case with the Three Rules of the Treaty of Washington of 1871. Declaratory treaties may be sources of law, if their interpretation of it is generally accepted.

(*c*) Treaties signed by two or three States only and stipulating for a new rule or rules as between the contracting parties. These are evidence of what International Law is not rather than of what it is; but if the new rule works well, and is gradually adopted by all other States, the treaties in which it originally appeared become sources of International Law. This was the case with the treaties which introduced the rule, Free Ships, free goods.

(*d*) Treaties containing no rules of international conduct, but simply settling the matters in dispute between the parties to them. Most treaties belong to this class; and it is obvious that they do not affect International Law in any way.

Important treaties generally contain stipulations on a great variety of subjects. When, therefore, we speak of treaties of such and such a character, we must be understood to mean portions of treaties as well as entire documents.

(3) The Decisions of Prize Courts and International Tribunals.

Prize Courts are described in Part III., Chapter IV. The decisions of the Judges of the more important of them are often most valuable sources of law; for they are the production of trained intellects applying recognised principles to new sets of circumstances. At the moment they merely decide the case on hand; but the reasonableness of the rules laid down often leads to their general acceptation, and thus in time they are incorporated into International Law. In the same way International Tribunals, such as Boards of Arbitration, sometimes lay down rules which win universal assent.

(4) Instructions issued by States for the Guidance of their own Officers and Tribunals.

When drawn by skilled jurists, these often decide knotty points in a manner which proves so valuable in practice that other States adopt it. Thus portions of a State's military or naval code may become embodied in International Law. The French Marine Ordinance of 1681 is a case in point.

(5) Diplomatic Transactions other than Treaties. The affairs of States give occasion for the production of a vast mass of State-papers of all kinds. Questions of International Law are often discussed therein with conspicuous ability, and occasionally an international controversy clears up a disputed legal point.

It must be clearly understood that the consent of States alone can give authority to a rule, and that the best evidence of their consent is practice. Thus practice is, as it were, the filter-bed through which all that flows from the sources we have mentioned must pass, before it can enter the main stream of International Law.

B. Divisions.

The divisions of International Law given by many text-writers are either unscientific or useless. For instance, the distinction between a *necessary* and a *voluntary* law is based upon the exploded theory of a Natural Code; and no one has even seriously set himself to work out in detail the ordinary distinction between a *customary* and a *conventional* law. It is

best to divide International Law into heads according to the various kinds of rights possessed under it by States, and their corresponding obligations. Thus we get

Normal Rights and Obligations of States.	(1) Rights and Obligations connected with Independence. (2) Rights and Obligations connected with Property. (3) Rights and Obligations connected with Jurisdiction. (4) Rights and Obligations connected with Equality. (5) Rights and Obligations connected with Legation and Negotiation.
Abnormal Rights and Obligations of States.	(1) Rights and Obligations connected with War. (2) Rights and Obligations connected with Neutrality.

By the Normal Rights and Obligations of States we mean those which they possess simply as subjects of International Law. By the Abnormal Rights and Obligations of States we mean those which they possess when they have superadded other capacities to their capacity as subjects of International Law. The first belong to them in the ordinary circumstances of peaceful international life. They obtain the second, as an addition to the first, in the extraordinary circumstances of belligerency or neutrality.

We thus get a division of International Law into The Law of Peace, The Law of War, and The Law of Neutrality, each of which will be the subject of one of the three following parts.

Questions.

1. What is meant by a Source of International Law? In what sense is it correct to speak of the great publicists as possessed of authority in disputes between States?

2. Estimate the importance to be attached to treaties as sources of International Law.

3. Why are the decisions of Prise Courts constantly quoted in books on Maritime Law?

4. Give the Divisions of International Law which commend themselves to you, and state the reasons for your preference.

Hints as to Reading.

Hall does not deal directly with the Sources of International Law, but some valuable remarks on Treaties considered as such will be found in his Introductory Chapter. At the end of his Part I. Chapter I. Wheaton discusses the whole subject; and in the same chapter, and at the beginning of Part II. Chapter I., his own and other views as to the proper Divisions of International Law are given. Chapter VI. of Volume I. of Twiss is on "The

Sources of the Law of Nations;" and Chapter II. of Halleck deals with the same subject in a somewhat different manner. The whole of Manning's Book II. is devoted to the consideration of it. For a pungent criticism of the doctrine that certain selected treaties form a *corpus* of International Law, see the latter part of *Some Remarks on a Work of M. Hautefeuille* in the Letters of Historicus.

PART II.

THE LAW OF PEACE.

CHAPTER I.

RIGHTS AND OBLIGATIONS CONNECTED WITH INDEPENDENCE.

A. The Nature of the Right of Independence.

Independence may be defined as *The right of a State to manage all its affairs, whether external or internal, without interference from other States.* It is the natural result of Sovereignty, and is therefore predicated by International Law of all sovereign States. Part-sovereign States are not independent, because they are not allowed full freedom of action in the department of external affairs. Fully-sovereign States are often restricted in various ways in the exercise of their right of free action; but inasmuch as the restrictions are imposed temporarily by events and circumstances, and are not the legal incidents of the existence of the States subjected to

them, they do not derogate from complete independence. They spring from

(1) Treaty Stipulations.

These may be

(*a*) Freely entered into in order to solve a present difficulty by submitting for the future to some restraint upon liberty of action, as when by the Clayton-Bulwer Treaty of 1850 Great Britain and the United States agreed to make no acquisitions of territory in Central America.

(*b*) Imposed by superior force upon a State in no condition to resist, as when by the Treaty of Tilsit of 1807 Napoleon forbade Prussia to keep up an army of more than 42,000 men.

(2) The Corresponding Rights of other States.

Anarchy would result if every State shaped its policy without reference to the rights, interests and susceptibilities of its neighbours. The right of independent action possessed by every sovereign State is therefore limited by the duty of not disturbing the peace, threatening the safety, or outraging the honour of other members of the family of nations.

(3) The Superintending Authority exercised by the Great Powers.

In the settlement of certain great international questions, such as those connected with the Turkish Empire, the six Great Powers of Europe, acting together, assume a primacy which other States tacitly recognise, by accepting as a matter of course the arrangements made by them. Whenever a State thus conforms itself to the decisions of the Great Powers, its freedom of action is in a measure qualified by their superior authority.

B. Intervention.

If a State uses its freedom of action in such a way as to injure its neighbours, it may be dealt with by remonstrance, backed up in the last resort by force. Such interference is called Intervention. It is justifiable in extreme circumstances; but history shews that States have generally been much too eager to meddle with the concerns of others. Intervention has been undertaken

(1) To ward off imminent danger to the Intervening Power, as when England assisted Spain and Portugal from 1808 to 1814 against Napoleon, who was striving to ruin her by shutting out her commerce from every European country.

(2) To prevent or ward off the illegal Intervention of other States, as when England sent troops to Portugal in 1826, in order to

stop the assistance given by Spain to Don Miguel in the civil war between his followers and the constitutional party in Portugal.

(3) To exercise a right of interference given by Treaty, as when in 1715 the Dutch sent 6000 troops to the assistance of the English Government against the insurgent Jacobites, in accordance with the guarantee of the Hanoverian Succession given by Holland at the Peace of Utrecht.

(4) To comply with the request of one of the parties in a Civil War, as when in 1849 Russia assisted the Austrian Government to put down the national movement in Hungary.

(5) To preserve the Balance of Power, as when the Grand Alliance made war upon France from 1702 to 1713 to prevent the union of the crowns of France and Spain upon the same head.

(6) To put down Revolution, as when in 1822 the Holy Alliance suppressed by means of Austrian troops the movements in favour of a free constitution in Naples and Piedmont.

(7) To stop proceedings repugnant to Humanity, as when England, France and Russia intervened in 1827 to put an end to the sanguinary struggle between Turkey and the revolted Greeks.

Some of these grounds of Intervention are clearly

valid, others as clearly invalid; while with regard to the remainder there is great doubt. Moral as well as legal considerations should be applied to each case. The first ground is legally and morally valid, if the danger to be guarded against is not contingent and remote, but direct and immediate. The second is legal; but a due regard for the welfare of his own people will make a wise ruler slow to act upon it alone. The third has a technical justification; but morality often condemns it, especially when the interference is in internal affairs. The fourth is condemned by both law and morality, as an attempt to prevent the people of a State from settling their affairs in their own way. The fifth and sixth are bad, unless the case is one of pressing danger to the intervening power, when Intervention can be defended on the first of the grounds we have mentioned, and no further justification is needed. The seventh has no legal justification; but morality may approve of it, if it is the only way of putting an end to horrible and long-continued atrocities.

C. General considerations applicable to Intervention.

Many Interventions are of a complex character, being undertaken on several grounds, or by several States acting together. In forming a judgment upon them it must be remembered that

(1) Interventions carried on by the Great Powers, as in some sort the representatives of European civilisation, or by some State or

States acting as their agent, are more likely to be just and beneficial than Interventions carried on by one power acting for itself only.

(2) Interventions by a temporary alliance of States have none of the authority attaching to the proceedings of the Great Powers, and are apt to end in disagreement, or even war, between the allies.

(3) Interventions in the internal affairs of States are greater infringements of their Independence than interference with their external action, and therefore require more weighty reasons to justify them.

The doctrine of absolute Non-intervention resulted from too great a reaction against the practice of indiscriminate Intervention. It is really based upon the assumption that a State has no duties to other States and to the great family of nations, a proposition which seems to carry with it its own condemnation.

QUESTIONS.

1. Define the Right of Independence as possessed by sovereign States, and shew how it may be restricted by special agreement without derogating from their sovereignty. Give instances of restrictions imposed by Treaty.

2. Prove that the authority exercised by the Great Powers sometimes limits the freedom of action of the smaller independent States.

3. What is Intervention? When do you consider it justifiable? Is it lawful to intervene in order to uphold the Balance of Power?

4. Discuss the doctrine of Non-intervention.

Hints as to Reading.

In Part I. of Hall portions of Chapter II. should be read, and in Part II. the whole of Chapter VIII. In Wheaton Chapter I. of Part II. deals with our present subject. Halleck in Chapter IV. goes over much the same ground. Chapter II. of Abdy's edition of Kent's *Commentary on International Law*, and Part IV. Chapter I. of Phillimore's *Commentaries* should be referred to for a treatment of Intervention from an historical point of view. Its legal aspects are discussed in the letter on *The Perils of Intervention* in the Letters of Historicus. The fifth of Lawrence's *Essays* sets forth the theory of the Primacy of the Great Powers.

CHAPTER II.

Rights and Obligations connected with Property.

A. Proprietary Rights of States.

States as corporate bodies are capable of owning property. Indeed our present International Law is to a great extent based upon the assumption that they possess proprietary rights over portions of the

earth's surface; for though the notion of territorial sovereignty is comparatively modern, it dominates so completely the rules observed between civilised States that it would be impossible for a nomadic tribe to come under them. A State's possessions may be territorial or non-territorial. Its non-territorial property consists of buildings and chattels. Public International Law does not deal with its rights of ownership over them, except in the case of belligerent capture, which is treated of under the Law of War. A State's territorial possessions consist of

(1) The land and water within that portion of the earth's surface which it claims by legal title.

(2) The sea within a three mile limit of its shores, and the narrow straits and bays along its coasts.

It must be noted that

(*a*) The three mile limit was originally fixed because it was coextensive with the range of artillery, and there is a tendency now to favour an extension of marginal waters corresponding with the increased range of modern guns.

(*b*) When a strait is six miles or less in width, and both its shores belong to the same power, it is a part of the territorial waters of that power; but if it connects

two portions of the High Seas, the vessels of other States have a Right of Innocent Passage through it.

(*c*) It is sometimes said that all bays, where the line drawn across the entrance from headland to headland is more than ten miles in length, are in law parts of the open sea, and free from the territorial authority of any power. But this rule, though valuable as a rough guide, is by no means universally accepted, and there are many exceptions to it.

(3) Islets fringing its coast.

They are held to accrue to, or be attendant upon, the main mass of its territory.

B. Modes of Acquiring Territory.

International Law recognises as valid the title to territory which has been acquired in one or another of various ways, which may be classified as follows:

(1) Occupation.

This occurs when territory previously uninhabited, or inhabited only by savage tribes, is taken and permanently held by a civilised State. Some formal act of annexation is required, and also the establishment of a settlement or settlements; but it is generally agreed that the territory occupied extends far beyond the limits of these settlements, though there have been great disputes as to the principles on which boundaries should be drawn in such

cases. Moreover the rights of the original inhabitants have frequently been disregarded.

(2) Cession.

This is the formal transfer of territorial possessions by one State to another. It may take place in consequence of transactions of various kinds. Cessions may therefore be

(*a*) By sale, when one State purchases territory from another.

(*b*) By gift, whether free or forced. Free gifts of territory are not common; but forced gifts are frequently extorted from a conquered State by its victorious foe.

(*c*) By exchange, when a State parts with territory, and receives in consideration of doing so other territory instead of what it gives up.

(3) Conquest.

This is the retention of territory taken from an enemy in war, and the exercise therein of all the powers of sovereignty, with the intention of continuing to do so permanently. It differs from Cession by forced gift in that there is no formal international transaction which marks the exact time of the commencement of the new title, and from Prescription in that there is a definite act or series of acts, other than mere possession, out of which the title immediately arises.

When a conquest in the military sense is confirmed by treaty of peace, the title to the conquered province is one of Cession, not of Conquest in the legal sense.

(4) Prescription.

This occurs when a State has held for a great length of time territory with regard to which it can shew no other ground of title known to International Law. The principle is recognised in order to avoid disputes about ownership; but no definite rules have been laid down as to the duration of the possession necessary to give a valid title.

(5) Accretion.

This occurs when the action of water adds to the land, or when islands are formed close to the territory of a State.

C. Questions connected with the Claims of States to Territorial Rights over Waters.

The claims of States to territorial rights over waters have led to the raising of a number of questions, some of which have only an historical interest, while others are matters of the utmost importance to-day. We will consider them in the following order.

(1) Claims to Sovereignty over the High Seas, and the Natural Straits which connect them.

In the middle ages many maritime States claimed territorial sovereignty over large

tracts of open sea; but with the rise of modern International Law these claims were disputed. They have gradually become extinct, and the principle that the High Seas may not be appropriated by any power is now universally recognised. Territorial rights over narrow straits connecting two open seas still remain; but they are limited by the Right of Innocent Passage, and the territorial power may not even levy tolls for profit.

(2) The Nature and Extent of the Right of Innocent Passage.

This may be defined as the right of free passage through the territorial waters of friendly States, when they form a channel of communication between two portions of the open sea. It is possessed by vessels of all States at peace with the territorial power, on condition that no acts of hostility are committed during the passage. It applies to ships of war as well as to merchant vessels.

(3) The Position in International Law of Inter-oceanic Canals.

The construction of the Suez Canal has raised this question; but it has not yet (July, 1885) been settled. Existing tendencies seem working in favour of the neutralization of such canals under an international guarantee, so that they may be open at all times to ships of all nations as peaceful passages.

(4) The Use of Sea Fisheries.

When a fishery exists in the territorial waters of a State, its exclusive use belongs to subjects of that State; but outside territorial waters the subjects of all States are free to fish where they please. These simple rules are, however, often modified by conventions giving to subjects of one power the right to fish in certain specified portions of another's marginal waters.

(5) The Navigation of Rivers and Lakes.

This question becomes important internationally when a great navigable river flows through the territory of two or more powers. The States which own the upper waters sometimes claim a right of free navigation to the sea; but the better view is that strictly speaking International Law confers no such right upon them. Within the present century, however, it has been given by special treaty in almost every case which has arisen among civilised powers, and a refusal to grant it would certainly be a gross violation of comity.

QUESTIONS.

1. How far do the proprietary rights of States extend over seas and other waters?

2. What is required of a State in order that it

may gain a valid title to territory by Occupation? Give what seem to you the best rules for deciding how much territory is gained by a single act or series of acts of occupation.

3. Criticise the doctrine that the Right of Innocent Passage does not extend to vessels of war.

4. Define the mutual rights and obligations of two riparian States (*a*) when each possesses one bank of a navigable river, (*b*) when the river flows during a portion of its course through the territory of one, and during the remainder through the territory of the other.

Hints as to Reading.

In Hall Chapters II. and III. of Part II., and in Wheaton Chapter IV. of Part II. should be read. Chapter VI. of Halleck will be found useful. Part I. Chapter II. of Woolsey's *International Law* may be read with advantage. Twiss deals with territorial rights at great length in his *Law of Nations*, Vol. I., Chapters VIII., IX. and XI. Phillimore's *Commentaries*, Part III., may be used as a book of reference for instances of the various modes of acquiring territory. The second and third of Lawrence's *Essays* discuss fully the legal position of the Suez and Panama Canals, and the various proposals made with regard to them.

CHAPTER III.

RIGHTS AND OBLIGATIONS CONNECTED WITH JURISDICTION.

A. General Rules on the Subject of Jurisdiction.

Speaking generally a State exercises jurisdiction over all persons and things within its territory. It has also a personal jurisdiction over its own subjects wherever they may be; but this jurisdiction is not often exercised, and cannot be enforced unless those who have made themselves amenable to it come within territory or on board vessels subject to the jurisdiction of the State whose citizens they are. We may lay down in detail that each State has jurisdiction over

(1) All Persons within its Territory, with certain exceptions.

For purposes of jurisdiction persons within the territory of a State may be divided into the following classes:

(*a*) Natural-born subjects. Each State defines by its municipal law what circumstances of birth shall make a given individual its subject. It is only when two or more States claim the same individual that international difficulties can be raised.

(*b*) Naturalized subjects. These are persons between whom and the State the tie of citizenship has been artificially created. The law of each State prescribes the necessary conditions and formalities; but in cases where a country does not recognise change of allegiance on the part of its subjects, complications are apt to arise between it and States which have naturalized any of them.

(*c*) Domiciled aliens. These are persons of a foreign nationality who are permanently resident within a country. For most purposes they are subject to its jurisdiction, but it cannot require from them purely political services.

(*d*) Travellers passing through its territory. These are under its criminal jurisdiction, and for some purposes under its civil jurisdiction also, but neither their personal status nor their political rights are affected by its law.

(2) All Things within its Territory with certain exceptions.

For purposes of jurisdiction things within the territory of a State may be divided into the following classes:

(*a*) Real property. This is entirely under the control of the State where it is situated.

(*b*) Ordinary Personal property. In cases in which the owner is domiciled within the State where the property is situated the local law applies; but if the property is in one State and the owner is domiciled in another, the *lex domicilii* as a rule prevails.

(*c*) Its own ships, both public and private, in its waters. The authority over them is complete, and extends to all acts done on board them.

(*d*) Foreign merchant vessels within its ports and territorial waters. They are subject to the local jurisdiction, if it is exercised over them. If not, they are under the jurisdiction of the State to which they belong. But France is the only power which refuses to take cognizance of acts done on board foreign merchantmen in its territorial waters, and even French authorities interfere if the peace of the port is threatened.

(3) All its Ships on the High Seas.

There can be no territorial jurisdiction on the open seas. Each State, therefore, exercises jurisdiction over all persons and things on board its vessels navigating them. The doctrine that a ship is a floating portion of the territory of the State to which it belongs has been invented to account for this rule;

but it is obviously a fiction, and moreover a clumsy one, for if consistently applied it would deprive belligerents of their undoubted right to search neutral vessels.

(4) All its Subjects outside the Territory and the Vessels under its Jurisdiction.

In virtue of the personal tie of allegiance States undoubtedly possess jurisdictional rights over their subjects in foreign territory, or on board ships of a foreign State, or in countries belonging to no civilised power. But they do not as a rule attempt to exercise these rights, since in most cases the territorial jurisdiction is sufficient. They, however, punish political offences against themselves committed by their subjects abroad, and also grave crimes of a non-political character. Sometimes, too, they assume control over acts done by their subjects in utterly barbarous or unoccupied countries. But, except in this last case, they cannot deal with an offender unless he comes within the territory or the vessels subject to their jurisdiction.

(5) All Pirates Seized by its Vessels.

Piracy is a crime against the whole body of civilised States; and it is therefore justiciable by any State whose cruisers can capture the offenders. It must, however, be noted that this applies exclusively to Piracy *jure gentium*.

Offences that are made Piracy by the municipal law of a State, must be dealt with by its officers and tribunals only. The Slave Trade is not Piracy *jure gentium*. Consequently special treaty stipulations are required to authorise the capture of vessels engaged in it by cruisers of another State.

Sometimes States claim to exercise jurisdiction over foreigners who have committed within foreign territory crimes against themselves or their subjects: but it is very doubtful whether such jurisdiction is recognised by International Law. All belligerent States have a limited jurisdiction over neutrals in order to restrain and punish violations of belligerent rights.

B. Exceptions.

There are exceptions to the rule that the jurisdiction of a State extends over all persons and things within its territory. These exceptions may be considered under the following heads:

(1) Foreign Sovereigns and their Suites.

When the head of a foreign State is visiting a country in his official capacity, he and his suite are entirely exempt from the local jurisdiction; but on the other hand he may not exercise any jurisdiction over his retinue, further than to send home for trial urgent cases that may arise among them.

(2) Diplomatic Agents of Foreign States.

They are for most purposes free from the local jurisdiction when residing abroad as the accredited representatives of their country. Their immunities will be considered when we come to the subject of Legation and Negotiation.

(3) Public Armed Forces of Foreign States.

The forces of one State peacefully passing through the territory of another are exempt in a greater or less degree from the local jurisdiction. Land forces and sea forces must be dealt with separately.

(*a*) Land forces may not pass through the territory of a friendly State without express permission. In the absence of special agreement on the subject of the jurisdiction to be exercised over them they are not amenable to the local law; but their own officers are responsible for their good behaviour.

(*b*) Sea forces require no special permission to enter the territorial waters of a friendly State; but they can be excluded from the ports and harbours of any power which gives formal notice of its intention not to allow them to enter. Within foreign territorial waters they are for most purposes exempt from the local jurisdiction. They ought, however, to

respect the local law as far as possible; but the better opinion seems to be that it cannot be enforced on board the ship in cases where it conflicts with the law of the country which owns the ship, such, for instance, as the reception of fugitive slaves on board a British man of war lying in a port of a country which allows slavery.

(4) Subjects of Western States Resident in Eastern Countries.

They have obtained by special treaties exemption from the local jurisdiction, and are subject instead to the jurisdiction of Consular Courts or Mixed Tribunals. The system rests entirely upon convention, and varies considerably in different Oriental countries.

C. Extradition.

Extradition is the surrender by one State to another of an individual who is found within the territory of the former, and is accused of having committed a crime within the territory of the latter. The better opinion seems to be that in the absence of special treaty stipulations such surrender cannot be demanded as a right, though it may be granted as a matter of comity. Most civilised States are now bound to one another by Extradition Treaties, which generally, though not invariably, contain the following stipulations:

(1) No one will be surrendered unless *primâ facie* evidence of his guilt is given.

(2) No political offenders will be surrendered.

(3) No surrender will be made unless adequate assurances are given that the accused will not on that occasion be tried for any offence other than the crime for which he is surrendered.

Each treaty contains a list of the crimes on account of which surrender will be made. The chief difficulty arises in clearly distinguishing political from other offences. At present no satisfactory solution of it has been reached.

QUESTIONS.

1. Over what classes of persons does a State possess jurisdiction?

2. What is meant by naturalization? Discuss the question whether a general Right of Expatriation is known to International Law.

3. For what reasons are Europeans exempt from the local jurisdiction in Oriental countries? Describe briefly the system of jurisdiction under which they live.

4. What conditions have to be fulfilled before Great Britain will surrender to a foreign State a fugitive criminal found on British territory?

HINTS AS TO READING.

Hall in Part II., Chapters IV., V., and VI. covers the subjects touched on in our present chapter. Wheaton

deals with them in Part II., Chapter II. Dana's notes to this portion of Wheaton's treatise are very valuable, especially those on Piracy. Baker's note at the end of Chapter VII. of Halleck may be referred to for information about Slavery, and in Chapter XII. will be found a discussion of the questions connected with National Character and Domicile. Towards the end of Part II., Chapter II., Section II. of Woolsey there is a good historical account of the efforts made by States to suppress the Slave Trade. Chapter III. of Abdy's Kent contains much information with regard to Consular Courts in the East. The paper on *The Territoriality of the Merchant Vessel* in the Letters of Historicus is an able exposure of the fallacious theory that a ship is a floating part of the territory to which it belongs. Some valuable remarks on Extradition will be found in Stephen's *History of the Criminal Law*, Chapter XVI.

CHAPTER IV.

RIGHTS AND OBLIGATIONS CONNECTED WITH EQUALITY.

A. The Doctrine of Equality.

By the doctrine of the Equality of States is meant that all of them who are fully independent have equal rights in the eye of International Law, not that all are equal in power or influence. The great

publicists who founded modern International Law made equality one of the fundamental principles of their system; but it may be questioned whether it is still applicable without qualification. During the present century the Great Powers have exercised in many matters of European interest a primacy inconsistent with it. They have, for instance,

(1) Established and neutralized the kingdom of Belgium.

(2) Made periodical settlements of the Eastern Question.

(3) Received States previously accounted barbarous, such as Turkey, within the pale of International Law.

(4) Received a new power, Italy, within the ranks of the Great Powers.

These proceedings, which are only examples taken from many of a similar kind, altered the legal position of other powers without their express consent; and the fact that the altered state of things was tacitly accepted by the smaller States seems to shew that a superintending authority of some sort is regarded by them as vested in the Great Powers. It is analogous to political control in a State, and is quite consistent with equality in such matters as jurisdictional and proprietary rights. It is, moreover, in a very rudimentary condition; but it is sufficiently marked to be noted as modifying the generally received doctrine of perfect Equality.

B. Rules of Ceremony and Etiquette.

Text writers have generally discussed under the head of Rights of Equality matters of ceremony and etiquette, as being the outward signs of equality in rank and consideration. And in cases where it is impossible to give the same treatment to all, as for instance in the ordering of State festivals or the signing of international documents, rules have been established for reconciling the theoretical equality of States with some recognised order of precedence. We may consider them briefly under the following heads:

(1) Rules of Precedence for Sovereigns and their Representatives.

Sovereigns who are crowned heads take precedence of those who are not; but powerful Republics, such as France and the United States, rank along with the great monarchical States. The *alternat* and other devices are used to determine the order of the signatures to a great international document. The rank of the regular diplomatic agents of States is fixed by general agreement. The rules respecting it will be given when we come to deal with Legation and Negotiation.

(2) Titles and their Recognition by other States.

Each State confers what titles it pleases upon its ruler; but other States are not

bound to recognise a new title, and they may impose conditions as the price of recognition.

(3) Maritime Ceremonials.

These are salutes between ships, or between ships and forts. They were once considered as important international questions; but they are now regarded simply as matters of courtesy. There are many rules concerning them.

All these ceremonial matters have lost the importance they possessed till the present century. A good many disputes concerning them have been amicably settled; and it is hardly likely that the peace and good-will of nations will be seriously disturbed by them in the future, as it has sometimes been in the past.

Questions.

1. Examine the doctrine of the Equality of States.

2. What are the chief rules of precedence for States and Sovereigns?

3. Write down the various devices for avoiding difficulties connected with the order of signing international documents.

4. Give the most important of the rules which govern maritime ceremonial.

Hints as to Reading.

Hall does not deal directly with our present

subject. A few words about ceremonial will, however, be found at the end of Part I., Chapter II. In Wheaton, Part II., Chapter III. should be read. Chapter V. of Halleck will be found useful, and also Part I., Chapter IV. of Woolsey. The fifth of Lawrence's *Essays* is an attempt to shew that the doctrine of the Equality of States no longer applies in all its rigour to international relations.

CHAPTER V.

RIGHTS AND OBLIGATIONS CONNECTED WITH LEGATION AND NEGOTIATION.

A. Diplomatic Intercourse.

States now carry on their ordinary diplomatic intercourse by means of agents permanently resident at each other's courts. The practice of maintaining such agents is comparatively modern. It was begun 1461-1483 by Louis XI. of France; but its general adoption dates only from the Peace of Westphalia of 1648. We must consider with regard to Diplomatic Agents

(1) The Classes into which they are divided, and their Relative Rank.

These questions gave rise to an immense number of disputes, till they were finally settled by the Congress of Aix-la-Chapelle in

1818. It was then agreed that Diplomatic Agents should be divided into four classes :

(*a*) Ambassadors and Papal Legates or Nuncios.

(*b*) Envoys and Ministers Plenipotentiary accredited to Sovereigns.

(*c*) Ministers Resident accredited to Sovereigns.

(*d*) Chargés d'Affaires accredited to Ministers of Foreign Affairs.

These classes rank in the order in which they are given above; and the members of any class take precedence among themselves according to the length of their residence at the court to which they are accredited. Only a few of the most powerful States send Ambassadors, though all States possessing what is called 'Royal Honours' have a right to do so. Part-sovereign States do not possess full Rights of Legation and Negotiation.

(2) The Obligation to receive them.

A State which declined to carry on diplomatic intercourse with other States would put itself *ipso facto* outside the pale of International Law. But diplomatic relations between two States may for adequate reasons be temporarily broken off. Such a proceeding is, however, a sign of a grave difference

between the two powers, and is often followed by war. On the other hand a refusal to receive a particular person as diplomatic representative from another State is no just ground of offence, if the individual in question is

(*a*) Personally obnoxious to the sovereign to whom he is accredited.

(*b*) One of the subjects of the State to which he is sent.

(*c*) Openly and avowedly hostile to the State to which he is sent.

For similar reasons a State may demand the recall of a diplomatic representative resident at its court, and in very extreme cases it would be justified in sending him out of the country.

(3) The Formal Observances connected with their Reception and Departure.

A diplomatic minister receives from his own government on his appointment

(*a*) A Letter of Credence, setting forth the objects of his mission, and requesting that full credit be given to what he says on behalf of his sovereign.

(*b*) Full Powers, giving him authority to act.

(*c*) Instructions, giving directions for his

guidance in the negotiations he undertakes.

(*d*) A Passport, authorising him to travel to his destination.

On his arrival he presents his Letter of Credence at an audience of the Sovereign, unless he be a Chargé d'Affaires, in which case he has audience of the Foreign Minister only. A similar ceremony is gone through on his departure at the termination of his mission.

B. Diplomatic Immunities.

While resident at foreign courts diplomatic ministers are exempt in a very great degree from the operation of the local law. Their persons are inviolable, unless they are actually plotting against the security of the State to which they are accredited, in which case they may be arrested and sent out of the country. They are free from legal processes directed against the person, unless they voluntarily consent to waive their privilege and appear in court. Their wives, families, and servants share their immunities to a very considerable, though ill-defined extent. Their property, too, has many immunities, especially the Hotel, or official residence. For most purposes it is under the jurisdiction of the State which the embassy represents, and except in extreme cases it may not be entered by the local authorities. For the purpose of detailed consideration diplomatic immunities may be classified as follows:

Connected with the Person	(1) Immunities of the minister, and those of his suite who possess the diplomatic character.
	(2) Immunities of his wife and children, his servants, and those of his suite who do not possess the diplomatic character.
Connected with Property	(1) Immunities of the Hotel, and other property belonging to the embassy.
	(2) Immunities of the private property of the minister in the country to which he is accredited.
	(3) Immunities of goods sent from abroad for the use of the embassy.

C. Consuls.

Consuls are commercial, not diplomatic, agents. They reside abroad for the purpose of protecting the individual interests of traders, travellers, and mariners belonging to the State which employs them. They are under the local law and jurisdiction, and their residences are not, as a rule, held to be free from the authority of the local functionaries. But their official papers are not liable to seizure, and soldiers may not be quartered in the consulate. In Oriental countries, however, special treaties give to the consuls of the Western powers a privileged position. They exercise jurisdiction over their countrymen, their persons and residences are inviolable, and in fact they possess more than the ordinary diplomatic immunities.

D. Treaties.

The treaty-making office in each State rests with those authorities to whom it is confided by the constitution of the State. As long as there is some power whose word can bind the whole body politic, foreign States have no right to enquire further. But other important matters connected with treaties are of international concern. We will consider them in the following order:

(1) The Nature and Necessity of Ratification.

Ratification is a formal ceremony whereby, some time after a treaty has been signed, solemn confirmations of it by the contracting sovereigns are exchanged. No treaty is binding without ratification, unless there is a special agreement to the contrary. In discussing the question whether a State is bound to ratify, two classes of cases must be considered.

(*a*) When the ratifying power and the treaty-making power are vested in different authorities. In this case there can be no obligation to ratify; for other States know from the beginning that they have to secure the assent of both authorities.

(*b*) When the ratifying power and the treaty-making power are vested in the

same authority. Here there is more doubt. Some contend that unless circumstances materially alter ratification cannot be withheld. But modern practice seems to support the theory that if, after the signature of a treaty, a State changes its mind from any reason other than mere caprice, it may refuse to complete the bargain by ratification.

(2) The Rules of Interpretation to be applied to Treaties.

The older text-writers spent a vast amount of ingenuity on this subject; but since there is no international tribunal to enforce rules of interpretation, disagreements as to the meaning of treaties have to be settled by fresh negotiations between the States concerned, and are often decided according to the convenience of the moment, rather than in accordance with the principles of grammar or logic. All we can venture to lay down is that ordinary words should be taken in their ordinary sense, and technical words in their technical sense, and that doubtful sentences and expressions should be interpreted by the context, so as to make the treaty homogeneous, and not self-contradictory.

(3) The Extent to which Treaties are binding.

In the eye of International Law the obligation of treaties is perpetual, unless a time is

limited in their stipulations, or they provide for the performance of acts which are done once for all, such for instance as the payment of an indemnity. But it is obvious that as circumstances alter, the engagements made to suit them get out of date. The question of when a treaty is obsolete, and under what circumstances it may be broken or ignored, is one of morality, not of law. Wars and other events are constantly modifying international arrangements. Each change must be judged on its own merits, bearing in mind on the one hand that good faith is a duty incumbent upon States as well as individuals, and on the other that no age can be so wise and good as to make its treaties the rules for all succeeding time.

QUESTIONS.

1. Trace the growth of the practice of sending permanent embassies to reside at foreign courts. How do diplomatic ministers rank among themselves?

2. What are the formalities observed at the reception and departure of a diplomatic minister?

3. Discuss the extent of the authority possessed over the Hotel of a diplomatic minister by the State to which he is accredited.

4. Is a State bound to ratify the treaties into which it has entered?

Hints as to Reading.

In Hall's Part II., portions of Chapter IV., and the whole of Chapters IX. and X. should be read. Part III. of Wheaton deals with our present subjects. Dana's note on *Diplomatic Immunity*, should be read by those who have access to it. Much valuable information will be found in Vol. I., Chapters XII. and XIII. of Twiss. In Halleck Chapters VIII.—XI. go very fully into many questions connected with Diplomacy. Book III., Chapter II. of Manning, and Chapter III. of Abdy's Kent will repay perusal.

PART III.

THE LAW OF WAR.

CHAPTER I.

THE DEFINITION OF WAR AND OTHER PRELIMINARY POINTS.

A. The Nature of War.

War may be defined as *A contest carried on by public force between States or communities having with regard to the contest the rights of States.* This definition excludes Private Wars, which have long been obsolete in Europe, and it also ignores the Grotian idea of war as a punishment. Modern International Law does not concern itself with the justice or injustice of wars. It deals only with the creation of the relation of belligerency, and the legal effects thereby produced. These are the same in all wars, whether morally just or unjust. Writers have divided wars into

(1) Formal and Informal,
(2) Perfect and Imperfect,
(3) Offensive and Defensive,
(4) National and Civil.

But these divisions have no legal significance. War is also distinguished from other forcible modes of obtaining redress in the quarrels of States, such as Reprisals, Embargo, and Pacific Blockade; but the chief distinction lies in the intent of the parties. The tendency of modern times is to restrict some at least of these methods. They cannot, however, be said to be abolished; and they are sometimes useful as affording a means of coercing weak States without as much suffering as would be caused by war.

B. Declarations of War.

Text-writers are divided as to the necessity of making formal Declarations of War. A review of the practice of States gives the following results:

(1) In the middle ages heralds were sent to give the enemy formal notice of hostilities; but this practice died out in modern times, the last instance of it being in 1657.

(2) The practice of sending to the enemy a Declaration of War next arose; but it never became a binding custom; and since 1700 there have been barely a dozen instances of such Declarations being made before the commencement of hostilities, while the present century has seen over sixty wars or acts of reprisal begun by European States without formal notice to the power attacked.

(3) Since the middle of the last century it has been customary for the country beginning the

war to publish a Manifesto within its own territory, and to send copies thereof to neutrals; but many wars have been commenced without the issue of such a document.

It is evident, therefore, that no Declaration or other notice is necessary. The opinion of the majority of publicists to the contrary was based originally upon the Roman *Jus Feciale;* but modern practice must override ancient authority. The legal effects of war now date from the first act of hostility.

C. Recognition of Belligerency.

Every recognised State obtains as a matter of course all the rights of a belligerent if it chooses to go to war; but when a community not being a State in the eye of International Law resorts to hostilities, it may in respect of its warlike operations be endowed with the rights and subjected to the obligations of a State, if other powers accord it what is called Recognition of Belligerency. Neutral States should not do this unless the community recognised

(1) Possesses a Fixed Territory,

(2) Is ruled by an Organised Government,

(3) Carries on War in a Civilised Manner,

(4) Affects by the Struggle the Interests of the Recognising State.

Recognition of Belligerency under any other circumstances is an unfriendly act towards the parent State. If the struggle is maritime, recognition is

almost a necessity; but land warfare can often be ignored. The parent State grants recognition in effect, though not in name, whenever from motives of humanity it treats its rebels not as traitors, but as enemies. The controversy with regard to the recognition by Great Britain of the belligerency of the Confederate States in 1861 illustrates the whole question.

D. The Immediate Effects of the Outbreak of War.

The moment war begins certain changes in the preexisting state of things are *ipso facto* brought about. These are

(1) The public armed forces of the belligerents are placed in a condition of active hostility.

(2) Private individuals are obliged to refrain from holding pacific intercourse with the enemy.

This rule is of itself fatal to the doctrine, which is also abundantly disproved on other grounds, that war is a relation between States only, and not between individuals as such.

(3) Some Treaties with the enemy, such as Treaties of Alliance, are abrogated, some, such as Extradition Treaties and Postal Conventions, are suspended, and some, such as Treaties altering the ordinary rules of Maritime Capture, are brought into active operation.

The question of the effect of war upon treaties is very complicated. Numerous cases arise, especially with regard to great international instruments signed by many powers, as to which it is impossible to lay down beforehand rules of universal application. It is also difficult to decide when a treaty is merely suspended by war, and when it is entirely abrogated.

Questions.

1. Define War. Into what kinds has it been divided? Is a formal Declaration of War necessary before hostilities can be lawfully begun?

2. What is meant by Recognition of Belligerency? Under what circumstances can it be given without offence to the parent State?

3. Discuss the doctrine that war is a relation of State to State, and not of individual to individual.

4. What is the immediate effect of the outbreak of war upon treaties between the belligerents?

Hints as to Reading.

The subjects discussed in this Chapter are dealt with by Hall in Part I., Chapter III., Part II., Chapter XI., and Part III., Chapter I. Boyd has inserted in Part I., Chapter II., of Wheaton a note on Recognition of Belligerency, and Part IV., Chapter I. of Wheaton's text discusses *The Immediate Effects of the Outbreak of War*. Book IV., Chapters I.—IV. of Manning, and Chapters XIV.—XVII. of Halleck will be found useful. Phillimore's *Commentaries*, Part IX.,

Chapters II. and III., may be referred to for instances of Reprisals and Embargo. Twiss in Vol. II., Ch. II., deals with Declarations of War.

CHAPTER II.

THE LAW OF WAR WITH REGARD TO ENEMY PERSONS.

A. The Acquisition by Persons of Enemy Character.

International Law allows a State to regard as enemies to a greater or less extent

(1) All persons found in the military or naval service of the enemy, or navigating his merchant vessels.

(2) All non-combatant subjects of the enemy State, with certain exceptions.

(3) Neutral subjects domiciled in the enemy's country.

(4) Its own subjects resident in the enemy's country during hostilities.

(5) Persons living in places in the military occupation of the enemy.

(6) Neutral persons having houses of trade in the enemy's country.

It must be noted that the above mentioned persons are tainted with the enemy character in very different degrees. Some are enemies only as far as a small portion of their property is concerned, others in every respect. Citizenship and domicile are the

two great tests of enemy character, domicile being determined by length of residence and intent.

B. Enemy Subjects found in a State at the Outbreak of War.

The treatment of such persons has varied very much at different times. Practice with regard to them may be epitomized as follows:

(1) In the middle ages a right to arrest them was held to exist, but it was rarely put in force; and they were generally allowed time to depart.

(2) In the last century a number of treaties were made, giving them a considerable time for withdrawal; and a few such treaties have been made in recent times.

(3) Since the middle of the last century the general custom has been to allow them to remain; and during the present century a number of treaties have stipulated for such permission, which is, of course, always subject to the condition that they give no assistance to the enemies of the State in which they reside.

We may conclude that the right to arrest has been taken away by contrary custom, and that, though the right to expel still remains, the exercise of it is looked upon with disfavour.

C. Enemy Combatants.

The division of an enemy population into combatants and non-combatants is one of the most conspicuous triumphs of humanity. The old idea

was that war delivered over the enemy and all that he possessed to unlimited violence. The modern idea is that only so much stress may be put upon him as is sufficient to destroy his power of resistance. This principle both limits the classes to whom violence may be applied, and defines the measure and extent of the violence when applied. Hence with regard to combatants

(1) Quarter is given except in very extreme cases.

Up to the close of the Thirty Years' War in 1648 it had to be formally stipulated for by treaty.

(2) Prisoners are cared for and exchanged.

Originally they were killed or reduced to slavery. In the middle ages the custom of ransom arose; and in modern times it has been superseded by exchange and release on parol.

(3) The wounded and sick are properly treated.

Special provision for them began in 1190, when the Order of Teutonic Knights was founded to tend the sufferers from disease and wounds at the siege of Acre, but it remained very meagre till quite recently. The Geneva Convention of 1864, which neutralized all persons and things connected with the care of the sick and wounded, was a great step in advance.

(4) The horrors which used to accompany the capture of besieged places have been mitigated.

There is, however, still room for improvement, and in this respect, as in others,

civilised armies behave far worse in struggles with barbarous or semi-barbarous States than in wars with foes similar to themselves.

(5) Certain means of destruction are forbidden. They are regarded either as treacherous or as unnecessarily cruel. In Chapter v. of this Part an enumeration of them will be found.

D. Enemy Non-Combatants.

The old custom was to inflict every indignity from robbery to death upon the unarmed inhabitants of an enemy's country. Gradually and slowly more humane practices won recognition, till at the present time

(1) Non-combatants are exempt from personal injury as long as they submit to the exactions of the enemy.

When they reside in territory under the enemy's occupation, they are liable to be called upon to perform for him any service that is not distinctly military in its character, and to pay contributions and requisitions. Moreover they must not, under pain of death, give assistance or information to their own side.

(2) The inhabitants of captured towns are held to be entitled to protection.

They should not be abandoned to the violence of the victorious soldiery. A custom of allowing women and children to leave places about to be bombarded is springing up, though it has not yet obtained binding force.

(3) Those who tend the sick and wounded are entitled to special protection under the Geneva Convention.

This is given to them on condition that they take no part in acts of hostility, and wear the badge of a red cross on a white ground.

The resolutions of the Brussels Conference of 1874 are most valuable as embodying the best practices of the great military nations with regard to enemy persons; but they have not been formally adopted by States as obligatory upon belligerents.

Questions.

1. How may neutral subjects acquire an enemy character, and enemy subjects a neutral character?

2. Give a brief sketch of the treatment to which enemy subjects found in a State at the outbreak of war have been subjected at various times.

3. Trace the gradual growth of humane usages with regard to combatants in war.

4. On what conditions are non-combatants exempt from personal molestation by a victorious enemy?

Hints as to Reading.

In Hall, Part III., Chapters II. and IV. and the first few pages of Chapter VI. should be read, and in Wheaton those portions of Part IV., Chapters I. and II., which bear upon the subjects we have been considering. Dana's notes to this part of his edition of Wheaton should be studied by those who have access to them. In Book IV., Chapters VII. and VIII.,

of Manning will be found an historical treatment of the rights given by war over enemy persons. Chapters XX. and XXXIII. of Halleck may be referred to with advantage.

CHAPTER III.

THE LAW OF WAR WITH REGARD TO ENEMY PROPERTY ON LAND.

A. The Acquisition by Property of Enemy Character.

In discussing the means whereby the enemy character is impressed upon property it is impossible to separate property on land from property at sea. We are, therefore, compelled to consider both together under this head: but the rest of the Chapter will deal with the former only. International Law regards as enemy property

(1) All property belonging to the enemy State.

(2) All property belonging to subjects of the enemy State, with certain exceptions.

(3) The produce of all estates owned by neutrals in belligerent territory, or in places in the military occupation of the enemy.

(4) Property owned by neutrals, but incorporated in enemy commerce, or subject to enemy control.

Sometimes it is difficult to tell whether a given place is under neutral or belligerent sovereignty. In such cases the character of the property found

within it, or issuing from it, must be determined by the use to which the place is put, and the character of the power exercising permanent military control within it.

B. Enemy Property found within a State at the Outbreak of War.

This may be divided into property of the enemy State and property of private individuals. In the rare cases in which any of the former is found in the territory of an enemy at the commencement of a war it will be confiscated, unless perhaps it happens to consist of books or works of art. Private property must be considered under the heads of

(1) Real Property.

The earliest practice was to confiscate it. The next step was to appropriate the revenues only. In modern times there has been no interference with it.

(2) Ordinary Personal Property.

This was confiscated till quite modern times, but in recent wars it has been left untouched. Many States have entered into treaties forbidding its confiscation. In the absence of special agreement the doctrine of the British and American Courts that war renders such property confiscable, but does not *ipso facto* confiscate it, is probably correct.

(3) Debts.

These must be divided into

(*a*) Debts due from a belligerent State to subjects of the enemy. The famous Silesian Loan Controversy abundantly proved that International Law protected such property from confiscation.

(*b*) Debts due from subjects of one belligerent to subjects of the other. These are on the same footing as other private property. The attempt made by England in 1807 to enforce the doctrine that they were unconfiscable met with little favour. They have not, however, been confiscated in recent times. They cannot be collected during the war; but the right to demand them revives as soon as peace is concluded.

C. Booty.

Movables taken from the enemy as spoil in the course of warlike operations on land are called Booty. International Law gives spoil of war to the captor's State; but the laws of all civilised countries provide that the whole or a part of the captured goods shall be made over to the captors. Generally booty is sold, and the proceeds divided among all concerned in the capture according to a plan drawn up by the authorities of the captors' State. If it is recaptured before it has been for twenty-four hours in the possession of the captors, or before they have brought it within their lines, it reverts to the original owners, and does not belong to the recaptors.

D. Belligerent Occupation and the Rights over Property gained thereby.

Till comparatively modern times no distinction was drawn between Occupation and completed Conquest, and the customs of warfare with regard to the appropriation and destruction of property by an invader were most severe. But from the end of the seventeenth and the beginning of the eighteenth century we may date a decided improvement. The rights of an occupying invader have been sharply distinguished from the full rights of sovereignty gained by Conquest. But inasmuch as they are still great, an invader is apt to regard a district as occupied on very slight grounds. The Brussels Conference of 1874 attempted to reduce the claims of an invading army to reasonable proportions by explaining the nature of Occupation in the following words:

A territory is considered as occupied when it is actually placed under the authority of the hostile army. The occupation only extends to those territories where this authority is established, and can be exercised.

Thus in order that an invader may lawfully exercise the rights of belligerent occupation in any district, he must have it in his firm possession. Occupation has most important legal consequences with regard to property. With certain exceptions movables belonging to the invaded State may be appropriated and alienated; but immovables may not be alienated,

though they may as a rule be used, and the rents and profits arising from them may be appropriated.

Private property in occupied districts may be dealt with as follows:

(1) Immovables may be used only so far as the necessities of war compel, and the profits arising from them may not be confiscated.

(2) Movables may not be seized unless they are of immediate use in war; but confiscation is allowed as a punishment for illegal acts done by the owners.

(3) Requisitions may be made, and contributions and fines levied, by the authorities of the occupying army.

Requisitions are demands for articles needed for the daily use and consumption of the invaders, contributions are sums of money exacted over and above the ordinary taxes, and fines are sums of money levied upon districts as punishments for offences against the invaders committed within them. Sometimes payment is made for what is taken by way of requisition, but it is not obligatory to do so.

QUESTIONS.

1. How may property acquire an enemy character?

2. What are the rules of International Law with regard to private enemy property found within a State at the outbreak of war?

3. Distinguish Booty from Conquests, Prizes,

Requisitions and Contributions. On what principles is it generally distributed?

4. Define an occupied district. What rights over property are gained by occupation?

HINTS AS TO READING.

Hall discusses the subjects noticed in this Chapter in Part III., Chapters III., IV. and VI. In Wheaton, Part IV., Chapter II. should be looked through again, and Dana's notes read, if possible. Book IV., Chapters IV. and V. of Manning will be found useful, as also will Chapters XXI., XXXIII. and XXXIV. of Halleck, and Volume II., Chapters III. and IV. of Twiss. The student who is a general reader will be able to pick up for himself much information about the practices of belligerents from histories and newspapers.

CHAPTER IV.

THE LAW OF WAR WITH REGARD TO ENEMY PROPERTY ON THE SEA.

A. Belligerent Rights of Capture.

At sea private as well as public property belonging to the enemy is liable to capture. We may consider the various cases under the following heads.

(1) Enemy Ships and Goods in Territorial Waters.

With regard to these International Law lays down that

(*a*) If found in their adversary's ports at the outbreak of war they may be captured. It has, however, been the custom in recent wars to allow a reasonable time for the departure of merchant ships under such circumstances.

(*b*) If they enter their adversary's ports after the outbreak of war they may be captured. But it is the custom to exempt them from seizure if they are driven in by stress of weather, and to allow merchant vessels which were on their way when hostilities began to enter and depart unmolested.

(*c*) If found in their own ports and territorial waters they may be captured, unless specially protected by the rules and conventions of warfare. Vessels engaged in coast fisheries are generally held to be free from liability to capture.

It is, of course, unlawful to carry on hostilities in neutral waters.

(2) Enemy Ships and Goods on the High Seas.

With regard to these we may say that

(*a*) Public vessels of the enemy State are always liable to capture, unless they are exclusively engaged in exploration, scientific discovery, or works of humanity.

(*b*) Enemy merchantmen, and enemy

goods on board them, may be captured. Cargoes of works of art have, however, been regarded as free from hostile seizure.

(*c*) Enemy goods not contraband, laden on board neutral vessels, are held to be free from capture by the powers who have signed the Declaration of Paris of 1856, that is to say by nearly all civilised States.

(*d*) Under certain circumstances, defined by the law of each country for its own cruisers, property recaptured from the enemy is restored to the original owners, on the payment of salvage to the recaptors.

(*e*) The ransom of ships and goods captured by the enemy is recognised by International Law, but most States forbid their subjects to resort to it.

These rules avoid as far as possible questions of neutral rights, which will be discussed in Part IV.

B. The Right of Search.

This is the right to stop and overhaul vessels on the High Seas, in order to discover whether they or the goods they carry are liable to capture. It is ancillary to the rights of capture, which would be useless without it. There is no real distinction between a Right of Visit and a Right of Search. It should be noted that

(1) The Right of Search is a strictly belligerent right, and does not exist in time of peace unless expressly granted by treaty.

(2) The presence of Convoy does not defeat the right, as will be seen at length in Part IV., Chapter III.

Some States have conventions regulating the exercise of the right. It is conceded by most civilised powers to one another in time of peace for the purpose of putting down the Slave Trade.

C. Prize Courts.

For the protection of neutrals, and the proper adjustment of the claims of captors, all civilised States establish Prize Courts in their territories to decide questions of proprietary right in captures made by their cruisers. We may lay down with regard to them that

(1) Though they are Municipal Tribunals, they administer International Law.

(2) Their jurisdiction is very extensive, taking in not only captures made by cruisers of their own country when it is at war, but also certain exceptional captures, made when it is at peace, by belligerent vessels which have violated its neutrality.

(3) They may sit in territory belonging to the captor or occupied by him, or in territory of the captor's ally in the war, but not in neutral territory.

(4) Their procedure is peculiar, taking the form rather of an enquiry by the government than of an ordinary trial between litigants.

(5) The State is responsible for their acts; and if they give unjust decisions, it is bound to grant satisfaction to the parties aggrieved, especially when they are neutral subjects.

D. The proposed Exemption of Private Property from Capture at Sea.

Great Britain is the only country that stands out strongly for the retention of the undoubted right to capture private property at sea in time of war. Other States desire its abolition. If we consider the question, we shall find that

(1) The arguments in favour of the change on general grounds are not conclusive.

The analogy of land warfare is deceptive: the plea of humanity will hardly bear examination; and the contention that, since the right of capturing enemy's property in neutral vessels has been surrendered, the proposed change would be but a small one, is a great exaggeration.

(2) Great Britain would act wisely if she acceded to the wishes of other nations in this matter.

Her trade is so vast, and so essential to her

existence, and the damage that could be done to it by one hostile cruiser is so enormous, that in spite of her maritime superiority she might be seriously injured even by a weak foe.

Questions.

1. Under what circumstances may enemy goods be captured on the High Seas?

2. Explain the nature and extent of the Right of Search.

3. What are Prize Courts? Over what classes of cases have they jurisdiction? Examine the peculiarities of their procedure.

4. Discuss the proposal to exempt private property from belligerent capture at sea.

Hints as to Reading.

In Hall the last pages of Chapters III. and V. of Part III. should be read, and also Chapter X. of Part IV. In Wheaton Chapters I. and II. of Part IV. will still repay perusal, especially if it is possible to read with them Dana's notes. Halleck deals fully with our present subject in Chapters XXII., XXVII., XXXI., XXXII., and XXXV., as does Twiss in Vol. II. Chapter V. The letter on *The Right of Search* in the Letters of Historicus is an able exposition of undoubted law, and a trenchant exposure of popular fallacies. The seventh of Lawrence's *Essays* (second edition) discusses the proposal to exempt private property from capture at sea.

CHAPTER V.

THE AGENTS AND INSTRUMENTS OF WARFARE.

A. Agents.

The soldiers and sailors of the regular army and navy of the belligerents, including fully organised militia and reserves, are of course lawful agents of warfare. But doubts and disputes have arisen as to the employment of certain kinds of persons. Some of the most difficult and controverted points of modern International Law arise with regard to them. We will consider them under the heads of

(1) Guerilla Troops.

It is generally held that they are lawful combatants if they wear a distinctive badge, carry arms openly, observe the ordinary rules of war, and act under the orders of a person responsible for his subordinates.

(2) Levies *en masse*.

When the inhabitants of districts not occupied by an enemy rise in obedience to the orders of their government, and are armed and organised under its authority, there can be no doubt that they are lawful combatants. With regard to spontaneous risings on the approach of an invader there is more difficulty; but the better opinion is that they are legal if the armed populations respect the laws of war. It is certain, however, that an insur-

rection of the inhabitants of occupied districts against an invader will not be regarded by him as a lawful act of war.

(3) Privateers.

Nearly all civilised States have formally given up the right to use them by signing the Declaration of Paris of 1856, which forbids them. The new device of a volunteer navy bears some resemblance to them, its legality depending upon the kind and degree of the control over the ships and crews exercised by the authorities of the State which employs them.

(4) Savage Troops.

The practice of employing them as allies and auxiliaries is reprehensible, but it is hardly possible to call it illegal. If they are regularly embodied and drilled, and led by civilised officers, they can undoubtedly be used; and it is the custom in warfare with barbarous tribes to accept the aid of other barbarians organised and led in their own fashion.

(5) Spies.

They may be used by commanders, but if they are caught by the other side, the penalty is death.

With regard to most of the above cases, the resolutions of the Brussels Conference of 1874 afford valuable information.

B. Instruments.

We may discuss these under the following heads, bearing in mind that all means and instruments of destruction not expressly forbidden by International Law are allowed. It will not be necessary, therefore, to deal with any but the prohibited and doubtful cases. We may lay down that

(1) The poisoning of food and water likely to be used by the enemy is unlawful, as is also the use of poisoned weapons.

(2) Assassination is forbidden.

(3) The use of incendiary shells, and of explosive bullets below a certain weight, is regarded as unlawful; but there is some doubt with regard to red-hot shot.

(4) The loading of guns with scraps of iron, glass, and other kinds of rubbish, is condemned.

(5) The devastation of territory is sometimes lawful and sometimes unlawful.

Devastation by an enemy is lawful when immediate and overwhelming military necessity can be pleaded as a justification of it. Otherwise it is regarded as barbarous and illegal. But the devastation by a population of their own country, in order to check the advance of an invader, is an act of heroic self-sacrifice which the laws of war in no way forbid.

(6) Stratagems which violate the general

understanding between belligerents are not allowable; but all other ruses may lawfully be resorted to.

QUESTIONS.

1. Under what circumstances can bodies of men not enrolled in the regular army of a belligerent State claim to be regarded as lawful combatants?

2. What are privateers? Write a brief account of their rise and fall as agents of naval warfare.

3. Give the laws of war with regard to spies.

4. What instruments and means of destruction are forbidden by International Law?

HINTS AS TO READING.

Part III., Chapter VII. of Hall will be found useful. In Wheaton portions of Chapter II. of Part IV. bear on the subjects of this Chapter. Chapter XVIII. of Halleck may be read with advantage. In Chapter VI. of Abdy's edition of Kent's *Commentary on International Law*, and in Twiss, Vol. II., Chapter X., will be found an historical account of privateering, and a discussion of various questions connected with it.

CHAPTER VI.

THE NON-HOSTILE INTERCOURSE OF BELLIGERENTS, AND THE LEGAL EFFECTS OF THE CONCLUSION OF PEACE.

A. The Non-hostile Intercourse of Belligerents.

During war a certain amount of more or less

amicable intercourse takes place between the belligerents. This may be considered under the heads of

(1) Flags of Truce.

These are used when one belligerent wishes to send a message to the other in the field. The bearers of them may not be fired upon, injured, or taken prisoners; but a belligerent may refuse to receive them at all, or may receive them only on conditions.

(2) Passports and Safe-conducts.

These are permissions to travel given by a belligerent government to subjects of the enemy. Passports are general, safe-conducts special permissions.

(3) Licences to Trade.

These are *general* when a State grants permission to all its own subjects, or all enemy subjects, to trade in particular articles or at particular places, *special* when permission is granted to particular individuals to trade in the manner described in the licence. Neutrals, too, may receive licences to engage in a trade closed to them by the ordinary laws of war.

(4) Cartels.

These are agreements between belligerents as to the mode of conducting such intercourse as they allow in war time. The term is applied especially to agreements with regard to the exchange of prisoners.

(5) Capitulations.

These are agreements for the surrender upon conditions of a fortified place, or a military or naval force.

(6) Truces and Armistices.

These are temporary suspensions of hostilities over the whole or a portion of the field of warfare. An armistice is generally concluded as the first step towards entering upon negotiations for peace.

B. The Legal Effects of the Conclusion of Peace.

War between civilised States is almost invariably terminated by a Treaty of Peace. It is to be noted that

(1) As soon as peace is made all rights incident to a state of war cease.

This is so unless the treaty itself fixes a future date for the termination of hostilities. Not only must there be no more fighting, but requisitions and contributions can no longer be levied, nor prisoners of war detained as such.

(2) At the conclusion of peace all private rights suspended during the war are revived.

Thus contracts not invalidated or rendered impossible of fulfilment by the war can be enforced at once, and private debts sued for.

(3) As between the States themselves the principle of *uti possidetis* holds good.

But this rule applies only where there are no express stipulations in the treaty of peace;

and treaties provide almost as a matter of course for the settlement of all important matters.

Completed Conquest has all the legal effects of Cession by treaty. But transfer of territory by mere Conquest is very rare in modern times. It is almost always made over by treaty, a course which has legally the great advantage of fixing the exact date when the new sovereignty, and the new order of things based on it, commence.

QUESTIONS.

1. Give the rules of International Law with regard to flags of truce.

2. Describe the nature of cartels. What are cartel ships, and under what regulations do they sail?

3. What is an armistice? Does it differ from a truce? Who have authority to make truces? What conditions are implied when one is concluded?

4. Enumerate the chief legal effects of the conclusion of peace.

HINTS AS TO READING.

Hall discusses the subjects of this Chapter in Chapters VIII. and IX. of Part III. Wheaton deals with them in a few pages of Chapter II. and the whole of Chapter IV. of Part IV. In Halleck, Chapters XXIX., XXX. and XXXIV. should be referred to. For a brief account of most of the questions under discussion Woolsey's *International Law*, Part II., Chapter I., Section V. may be read.

PART IV.

THE LAW OF NEUTRALITY.

CHAPTER I.

THE NATURE OF NEUTRALITY, AND THE DIVISIONS OF THE LAW OF NEUTRALITY.

A. The Nature of Neutrality.

Neutrality may be defined as *The condition of those States which in time of war take no part in the contest, but continue pacific intercourse with the belligerents.* On their part, therefore, it is a continuation of the previously existing state of peace; but nevertheless there are affixed to it by International Law certain rights and obligations which do not exist in a time of universal peace, and these are set forth and defined in the Law of Neutrality. We may discuss the nature of neutrality under the following heads:

(1) The Kinds into which it has been divided. These are given by text-writers as

(*a*) Perfect neutrality, which is simply neutrality of the ordinary type, involving complete impartiality, and equality in the treatment of both sides in the war.

(*b*) Imperfect or qualified neutrality, which

is described as neutrality modified by treaty engagements, the theory being that a State which had covenanted before the war to send a contingent to the army or navy of one of the belligerents, or to grant it special and exclusive privileges in matters connected with war, should be allowed to do so without forfeiting its neutral character.

The tendency of practice for the last century has been to insist upon perfect neutrality in all cases; and as imperfect neutrality is quite contrary to the principle of impartiality which is at the root of modern ideas upon the subject, it may be pronounced illegal now that custom no longer supports it. Modern International Law cannot recognise an anomalous condition midway between hostility and neutrality.

(2) The Difference between Neutrality and Neutralization.

In ordinary neutrality is involved the two elements of abstention from taking part in an existing war, and freedom to engage in it or not to engage in it at pleasure. In neutralization the first element remains the same; but instead of the second there is imposed by International Law an obligation not to fight except in the strictest self-defence. This condition of enforced abstinence from hostilities is imposed on

(*a*) States, such as Belgium and Switzerland, whose independence and perpetual neutrality are guaranteed by the Great Powers of Europe.

(*b*) Provinces, such as Savoy and the Ionian Islands, which have been neutralized by the Great Powers, but whose position, as portions of States which are free to make war when they think fit, is certainly anomalous.

(*c*) Persons and things, such as those connected with the care of the sick and wounded in war. These were neutralized by the Geneva Convention of 1864.

Seas, straits, and other waterways, could, if desired, be neutralized as well as territory. At the present time (July, 1885) negotiations are going on for the neutralization of the Suez Canal. As neutralization alters the rights and obligations of all the States that are affected by it, either their express consent, or the agreement of the Great Powers acting as in some sort their representatives, is necessary in order to give it validity. The word is often used in a loose and inaccurate manner. We must, therefore, remember that there can be no true neutralization without the complete and permanent imposition of the neutral character by general assent.

B. The Divisions of the Law of Neutrality.

Neither Greeks nor Romans had names exactly corresponding to our terms *neutral* and *neutrality*. Indeed these terms did not come into general use till about the middle of the eighteenth century, a sure proof that no great body of law had grown up with regard to the things signified by them. In the middle ages it was common for States who were ostensibly no parties to a war to commit flagrant acts of hostility, and for belligerents to violate neutral territory with scant ceremony. So rudimentary was the law on the subject that even Grotius has but one chapter on neutrality. But from his time a number of rules concerning it rapidly grew up, till now they form one of the largest and most important portions of International Law. The Law of Neutrality falls naturally into two divisions. We will deal with it under the heads of

(1) Rights and Obligations as between Belligerent States and Neutral States.

With regard to these we may mark the following stages in the growth of opinion:

(*a*) As soon as it was recognised that belligerent and neutral States had duties to one another, it was held that the neutral must measure its duty to the belligerent by its view of the justice of the quarrel, and that the belligerent must allow the neutral to abstain from

war, and must not violate its sovereignty on trivial pretexts. This was the view of Grotius, and it may be roughly described as the accepted doctrine of the seventeenth century.

(*b*) The next stage is reached when it is generally considered wrong for a neutral to give assistance to a belligerent unless bound to do so by treaty made before the war, and for a belligerent to violate neutral sovereignty without grave necessity. This may be roughly described as the accepted doctrine of the eighteenth century.

(*c*) Finally we get the view that the neutral must refrain from giving aid to a belligerent under any circumstances, and that it must also restrain its subjects from certain acts calculated to assist one belligerent to the detriment of the other. Belligerents on their part must scrupulously respect neutral sovereignty. This may be roughly described as the accepted doctrine of the nineteenth century.

This part of the Law of Neutrality is in the main due to the development of the ethical principles that the neutral is bound to shew perfect impartiality, and the belligerent to respect neutral sovereignty. The process of growth still continues; and though at the present time the rights of neutral States are

tolerably well defined, there is great doubt as to the full measure of their obligations.

(2) Rights and Obligations as between Belligerent States and Neutral Individuals.

From the infancy of maritime law belligerents have had the right of putting a certain amount of restraint upon the trade of neutral merchants. If a neutral individual engages in a forbidden trade, the belligerent State does not complain to the neutral State, but it strikes at the neutral individual directly, and punishes him in its own Prize Courts. The neutral State does not appear in the matter at all, unless the punishment is not warranted by International Law, in which case it claims reparation for its injured subject. We may consider this portion of the Law of Neutrality under the heads of

(*a*) Ordinary Commerce,
(*b*) Contraband Trade,
(*c*) Blockade,
(*d*) Unneutral Service.

The law on these subjects arises from the conflict of the two principles that neutrals have a right to continue their peaceful pursuits undisturbed by belligerents, and that belligerents have a right to continue their warlike operations undisturbed by neutrals. It is made up of rules settling which of them shall prevail in given cases. The

tendency of modern times has been to curtail the rights of belligerents and enlarge those of neutrals, but the precise directions in which it has operated will be seen better when we come to deal separately with each of the heads we have just given.

QUESTIONS.

1. Define Neutrality. Into what kinds has it been divided? Examine the propriety of the division.

2. Explain the exact position in International Law of a Permanently Neutralized State. Give a list of such States.

3. Shew by a short historical review that the obligations of neutral States have grown enormously within the last century.

4. Give the divisions of the Law of Neutrality, and point out the principles on which they are made.

HINTS AS TO READING.

Hall's treatment of Neutrality is exceedingly full and able. Chapter IV. of Part I. should be read as a preliminary exercise. Chapters I. and II. of Part IV. deal with the subjects discussed in this Chapter. Some of them are considered in the earlier sections of Chapter III., Part IV., of Wheaton. Manning in Book V., Chapters I., III. and IV. deals historically with the growth of neutral rights. The question of the true meaning of neutralization is discussed in Part III. of the second of Lawrence's *Essays*.

CHAPTER II.

RIGHTS AND OBLIGATIONS AS BETWEEN BELLIGERENT STATES AND NEUTRAL STATES.

A. The Obligations of a Belligerent State towards Neutral States.

International Law defines with considerable clearness the obligations of a belligerent State in its relations with neutral States. The following are the chief of them:

(1) Not to carry on hostilities within neutral territory.

(2) Not to use neutral territory for the purpose of fitting out expeditions against the enemy, and not to make it a base of operations.

(3) To obey all regulations made by neutrals in such matters as the disarming and interning of its troops driven across neutral frontiers, the admission of its cruisers and their prizes into neutral ports, the length of time they may stay there, and the amount of supplies they may take in.

(4) To make reparation to any State whose neutrality it may have violated.

B. The Obligations of a Neutral State towards Belligerent States.

The portion of International Law which deals with the obligations of neutral States in their rela-

tions with belligerent States is in a very unsettled condition. Some of its rules are clear and definite. With regard to others there is much doubt; for opinion has changed greatly in modern times, and no fixed usage has as yet grown up. We may say that a neutral State is bound

(1) Not to give armed assistance to either belligerent.

Even limited aid given in accordance with a treaty made before the war would not be allowed now.

(2) Not to allow the passage of belligerent troops through its territory.

There is some doubt about this; but both practice and opinion in modern times are in favour of the prohibition.

(3) Not to sell armed ships and other instruments of warfare to a belligerent.

It is, however, doubtful whether a neutral government is bound to stop its ordinary public sales of old stores merely because belligerent agents may buy them.

(4) Not to lend money to a belligerent.

It need not, however, restrain its subjects from doing so, nor from trading with a belligerent in arms and munitions of war.

(5) To disarm and intern all belligerent troops that pass into its territory, and set at liberty all prisoners of war found therein.

The crews of belligerent ships of war in neutral ports, and any prisoners there may be on board such ships, are exceptions to this rule. They cannot be dealt with by the neutral.

(6) Not to allow belligerents to levy troops within its dominions, or fit out or recruit armed expeditions, naval or military, therein, or increase the armament or fighting crew of any vessel of war in its territorial waters.

In cases of breach of neutrality either in the circumstances of a capture, or in the fitting out of the capturing vessel, the neutral must restore the prizes taken, when they are found within its jurisdiction. There is, however, some doubt as to the limit of the neutral's right to try such cases. Belligerent cruisers may be allowed to take in provisions or undergo repairs in neutral ports.

(7) Not to allow its subjects to accept letters of marque from a belligerent, or leave its territory in considerable numbers for the purpose of enlisting in the service of a belligerent, or fit out within its territory armed expeditions against a belligerent, or increase therein the warlike force of any belligerent ship or expedition.

(8) To make reparation to any belligerent who may have been injured by failure on its part to perform its neutral duties.

C. A Doubtful Point.

At the present time there is great uncertainty with regard to the obligations of neutral States in the case of ships built and fitted out within their territory for the service of either belligerent. Till lately the English idea seems to have been that the neutral government was under no obligation to stop such proceedings, unless the vessel was ready to commence hostilities the moment it left neutral waters. But the events connected with the escape of the *Alabama* and her sister cruisers during the great American Civil War demonstrated the inadequacy of this view. No satisfactory rule has as yet been adopted. Two views demand attention.

(1) The American principle that the intent ought to prevail—the *animus vendendi* being innocent, the *animus belligerendi* being guilty.

This rule has led to endless subtleties in its practical working. There is great difficulty in distinguishing between what is permitted and what is forbidden by it.

(2) The suggestion of Hall that the character of the vessel should be the test—"vessels built primarily for warlike use" being detained, while "vessels primarily fitted for commerce" are allowed to depart unmolested.

This rule has the advantage of clearness; but it would undoubtedly permit the departure of many vessels which might be converted into formidable engines of war.

The three rules of the Treaty of Washington of 1871, have owing to their loose phraseology raised more difficulties than they have solved; and the award of the Geneva Arbitrators merely settled the dispute submitted to the tribunal. The immense and unprecedented extension given by it to neutral duties is not likely to be embodied in International Law.

D. Foreign Enlistment Acts.

These are municipal statutes made by States for the protection of their neutrality. If any provisions in them go beyond the requirements of International Law, belligerents cannot demand that such provisions shall be enforced in their favour. On the other hand, if neutral governments are not armed by their own laws with sufficient power to enable them to fulfil their neutral obligations, the plea of such defect of power is no valid answer to belligerent demands. International Law, not Municipal Law, is the measure of a neutral's rights and obligations. This statement is proved abundantly by the history of the British and American Foreign Enlistment Acts.

Questions.

1. Write down the chief obligations of neutral States, distinguishing between those which are undoubted and those concerning which there is some controversy.

2. In what cases has a neutral jurisdiction to try the validity of belligerent captures?

3. Under what circumstances is a neutral bound to prevent the original departure from its ports of vessels fitted out therein for the naval service of a belligerent? If such vessels escape, how must the neutral State treat them afterwards?

4. Give and criticise the three rules of the Treaty of Washington.

Hints as to Reading.

This is the most doubtful and difficult part of the Law of Neutrality; and the student must expect to find conflicting views with regard to it in the books he reads. In Hall Chapters III. and XI. of Part IV. should be read, the former very carefully. In Wheaton portions of Chapter III. of Part IV. bear on our present subject; and Dana's notes are valuable, especially that on *Neutrality or Foreign Enlistment Acts*. Chapter XXIV. of Halleck will be found useful, as will Chapter VII. and the first part of Chapter VIII. of Abdy's Kent, Part II., Chapter II., Section I. of Woolsey, Book V., Chapters I—IV. of Manning, Vol. II., Chapters XI. and XII. of Twiss, and the papers numbered III., VI. and VII. in the Letters of Historicus.

CHAPTER III.

RIGHTS AND OBLIGATIONS AS BETWEEN BELLIGERENT STATES AND NEUTRAL INDIVIDUALS.

Ordinary Commerce.

A. Various Principles for regulating Maritime Capture.

On land neutral goods in belligerent territory are subject to the ordinary rules of warfare. At sea the interests of belligerents and neutrals are so interwoven in matters of commerce that it is difficult to separate them, and strike at an enemy without injuring a friend. Two principles have found favour as rough attempts to make a workable compromise. They are

(1) That the quality of the goods should be determined by the character of the owner.

(2) That the quality of the goods should be determined by the character of the vehicle which carries them.

The first leads to the practical rule that *Enemies' goods can be captured even on board neutral ships, and neutral goods are free even on board enemies' ships.* This rule was laid down in the *Consolato del Mare,* and became part of the common law of

nations. Till 1856 England held by it in all cases, unless bound by treaty to other rules. The second principle gave birth to the twin rules, *Free ships, free goods; Enemies' ships, enemies' goods.* The Dutch were the great champions of these rules during the period when Holland was the chief carrying power: but in order to get the benefit of them they had to embody them in their treaties.

The combination of the two principles has given two more rules standing at opposite poles of severity to neutrals, according as the severe portions or the lenient portions of the principles are joined together. The first of these is the French rule, that *Neutral goods in enemies' ships, and enemies' goods in neutral ships, are liable to capture.* From 1681 to 1744 this was joined with the still more severe rule, *Neutral ships laden with enemies' goods are liable to capture.* The second is the rule of the Declaration of Paris, 1856, that *Enemies' goods in neutral ships, and neutral goods in enemies' ships, are not liable to capture.* This last is the old rule, *Free ships, free goods,* without the corollary, *Enemies' ships, enemies' goods.* Attempts were made to foist it into International Law by Prussia in the Silesian Loan controversy, and by the Armed Neutralities of 1780 and 1800. But the opposition of Great Britain was successful, and she did not agree to it till after the Crimean war. Since then the rule has been accepted by nearly all civilised powers, and seems likely to be incorporated into ordinary International Law.

B. Rules of Capture now in force against Neutrals.

The rules of capture which affect the ordinary trade of neutrals at the present time may be considered as dealing with

(1) Ships and goods without special protection from the neutral sovereign.

With regard to these we may lay down that

(*a*) Though the common law of nations allows the capture of enemies' goods in neutral vessels, the Declaration of Paris has banished the practice from civilised warfare.

(*b*) Though a neutral merchant has the right to lade his goods on board an unarmed merchant vessel belonging to a belligerent, it is doubtful whether he may lade them on board an armed merchant vessel of a belligerent without rendering them liable to capture, and certain that he may not lade them on board a belligerent ship of war.

(*c*) Resistance to belligerent search on the part of a neutral vessel renders both vessel and cargo subject to confiscation.

(2) Ships and goods specially protected by means of Convoy.

From the middle of the sixteenth century onwards neutral states have often put forward

a claim that their merchant ships should be exempt from belligerent search, if under the convoy of their ships of war. The second Armed Neutrality asserted that the exemption was a rule of International Law. Continental States and continental writers generally adopt this view. But England has always opposed it, and the great jurists of the United States have supported her. It seems clear that

(*a*) The right of search cannot be defeated by the acceptance of convoy.

(*b*) Resistance on the part of the convoying ship renders all the convoyed ships liable to capture and condemnation.

Thus special agreement is necessary in order to gain exemption from search for neutral ships convoyed by the cruisers of their own country. Neutral vessels under belligerent convoy are undoubtedly good prize.

QUESTIONS.

1. Write a short historical account of the rule, *Free ships, free goods.*

2. What were the rules laid down as to ordinary maritime capture by the Declaration of Paris? Can they be regarded as International Law?

3. Discuss the question whether a neutral may lade his goods on board an armed merchant vessel belonging to a belligerent.

4. Does the presence of neutral convoy exempt convoyed vessels from belligerent search?

HINTS AS TO READING.

Chapters IV., VII., IX. and X. of Hall's Part IV. should be read. Portions of Chapter III. of Wheaton's Part IV. deal with our present subject. Manning treats it very ably from an historical point of view in Book V., Chapters VI. and XI. Chapter XXVIII. of Halleck may be referred to, and also the early portions of Part II., Chapter II., Section II. of Woolsey, and Chapter V. of Vol. II. of Twiss.

CHAPTER IV.

RIGHTS AND OBLIGATIONS AS BETWEEN BELLIGERENT STATES AND NEUTRAL INDIVIDUALS.

Contraband Trade.

A. The Nature of the Offence of Carrying Contraband.

Maritime law has always given to belligerents the right of intercepting on the way to the enemy such goods as are directly and essentially necessary to him in the conduct of his hostilities. The exercise of this right involves the capture of neutral goods when they are what is called Contraband of War. Neutral merchants are under no obligation to refrain from trading in contraband; but if they convey it

to a belligerent they must risk capture by the other belligerent. It is to be noted that

(1) The offence consists not in selling the goods, but in carrying them.

(2) To create the offence a belligerent destination is essential; but it need not be immediate; for if a merely colourable neutral destination is interposed, the real and final terminus being belligerent, the goods are condemned under what is called the doctrine of Continuous Voyages.

(3) The offence is complete the moment a vessel carrying contraband leaves port for a belligerent destination, and is 'deposited' the moment the destination is reached and the goods delivered.

B. The Tests of Contraband Character.

In deciding what is contraband we shall be helped by the old division, first made by Grotius, of all goods into three classes, the first being those useful primarily and ordinarily for warlike purposes, the second those useful primarily and ordinarily for peaceful purposes, and the third those useful indifferently for warlike and peaceful purposes. It is universally admitted that the first kind are always contraband, and the second never. There is great difference of opinion as to the third class, and also as to whether certain articles, such as materials for naval construction, shall be included in the first

class or not. The practice of States in such matters has been based more on self-interest than on principle: but we can discern two currents of opinion, which may be roughly distinguished as the British and the Continental. We will consider them separately.

(1) The British view may be summed up briefly in the propositions that

(*a*) Some goods are to be condemned on mere inspection as being in their very nature contraband, and, besides arms and munitions of war, such articles as naval stores and horses, are included among these goods.

(*b*) With regard to other goods of an ambiguous character mere inspection is not sufficient, but there must be further enquiry, and they are to be condemned or not according to the circumstances revealed in the enquiry. This is called the doctrine of Occasional Contraband; and in applying it the courts consider such circumstances as the destination of the goods, the place of their origin, the special needs of the enemy, and also whether the goods are raw material or manufactured articles.

(2) The Continental view may be summed up briefly in the propositions that

(*a*) Only munitions of war, ships of war,

and the materials for the manufacture of gunpowder and other explosives used in war, are in their own nature contraband.

(*b*) The doctrine of Occasional Contraband must be restricted within the narrowest limits, if not altogether rejected.

The British view has a stronger basis in reason and authority than the other; but our courts have sometimes extended unduly the list of the articles that are in their own nature contraband. There seems no prospect of avoiding constant controversies, unless all civilised states can be brought to agree periodically upon a list of contraband articles which shall be binding till the next revision.

C. The Penalty for carrying Contraband.

Generally speaking the penalty for carrying contraband is confiscation of the contraband goods; but the vessel also is condemned if

(1) It and the contraband cargo belong to the same owner.

(2) False papers are provided, or any other fraudulent device is resorted to.

(3) It has on board articles which a treaty between the owner's own country and the country of the capturing belligerent regards as contraband.

There seems some doubt whether the mere knowledge of the owner of the ship that his vessel is employed to carry contraband will be sufficient to

secure its condemnation. Innocent goods found on board a vessel laden with contraband are condemned if they belong to the same owner as the contraband. Preemption, or the forcible purchase of the goods at a fair price, is a mitigation of the strict right of capture sometimes granted by belligerents under certain circumstances. Belligerents have occasionally subjected to preemption goods that were not contraband; but such a course is contrary to International Law.

Questions.

1. Explain the circumstances under which a neutral is guilty of the offence of carrying contraband. How does the doctrine of Continuous Voyages apply to such cases?

2. What kind of goods are always contraband? Enumerate the chief tests that have been applied in order to determine whether articles *ancipitis usus* are contraband or not.

3. What is the penalty for carrying contraband?

4. Explain the action of the rule of preemption.

Hints as to Reading.

The reader of Hall will find the Law of Contraband set forth in Part IV., Chapter V. It will also be found in Wheaton, Part IV., Chapter III. Halleck gives it in Chapter XXVI., Manning in Chapters VII. and VIII. of Book V., Twiss in Volume II., Chapter VII., and Woolsey in Part II., Chapter II., Section II.

Much clear and valuable reasoning on the subject will be found in the Letters of Historicus on the *Trent* affair.

CHAPTER V.

RIGHTS AND OBLIGATIONS AS BETWEEN BELLIGERENT STATES AND NEUTRAL INDIVIDUALS.

Blockade.

A. The Nature of Blockade.

Blockade as a warlike operation governed by special rules is wholly maritime. The cutting off of all communication with a given locality on land is merely an incident of siege operations, and is governed by the ordinary rules of warfare. But maritime law gives to belligerents the right to prevent access to or egress from the ports of their enemy by stationing a squadron of ships in such a position that they can intercept all vessels attempting to approach or leave such ports. As this cuts off neutral trade, the Law of Blockade is an important part of the Law of Neutrality. Belligerents have sometimes endeavoured to gain all the advantages of a blockade by merely issuing a proclamation to the effect that the enemy's coast is blockaded, or by supporting such a proclamation with an insufficient force. But such attempts were always illegal; and all doubt on the subject, if any existed, has been

set at rest by the fourth article of the Declaration of Paris, which forbids what are called Paper Blockades in the words

> *Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.*

This must be taken to mean that the force must be sufficient to make entrance or egress exceedingly difficult and dangerous.

B. The Kinds of Blockade.

Blockades may be classified in two ways. They can be distinguished by differences in the ultimate objects for which they are undertaken, or by differences in the nature of the means taken for making them known. We will consider each separately.

(1) Difference of Object. This gives us

(*a*) Military or Strategic Blockades, carried on with a view to the ultimate reduction of the place blockaded.

(*b*) Commercial Blockades, where the object is simply to weaken the resources of the enemy by cutting off his external trade. Such blockades have been denounced as unwarrantable interferences with neutral commerce; but there can be no doubt of their legality.

(2) Difference of Notification. This gives us

(*a*) Blockades *de facto* only, that is to say,

Blockades the existence of which has not been diplomatically notified to neutral governments. Unless they have continued long enough to be notorious, neutral ship-masters approaching the blockaded ports are entitled to a warning, and their vessels cannot be captured unless they afterwards attempt to enter.

(*b*) Blockades *de facto* accompanied with Notification, that is to say, Blockades the existence of which has been diplomatically notified by the belligerent State to neutral governments. In such cases notification to neutral governments is held to be notification to neutral ship-masters, and they are not entitled to warning unless they can prove actual and unavoidable ignorance of the blockade.

In English prize law great differences are made in dealing with cases of breach of blockade according to the presence or absence of diplomatic notification; but it is of little or no importance in French practice, which is to give warning to the neutral ship-master in every case on the first approach of his vessel.

C. The Offence of Breaking Blockade.

To constitute a breach of blockade three things are necessary:

(1) The existence of an effective blockade.

(2) Knowledge of its existence on the part of the ship-master supposed to have offended.

(3) Some act of violation, either by going in or coming out with a cargo laden after the commencement of blockade.

The doctrine of Continuous Voyages applies to cases of breach or attempted breach of blockade. The offence attaches from the moment the vessel leaves her own waters with the intention of running the blockade, and is not 'deposited' till the termination of her return voyage.

D. The Penalty for Breach of Blockade.

Generally speaking the penalty for breach of blockade is confiscation of both ship and cargo; but the ship alone is condemned,

(1) If the vessel and cargo belong to different persons, and the owner of the cargo did not know that the port of destination was blockaded.

(2) If, under similar circumstances of ownership, the master alters his destination to a blockaded port, the fact of the blockade having been unknown when the voyage began.

Questions.

1. Illustrate the law as to Paper Blockades by

a short account of the Berlin and Milan Decrees, and the retaliatory British Orders in Council.

2. Discuss (*a*) the legality, (*b*) the justice of Commercial Blockades.

3. What legal consequences flow from the diplomatic notification of an effective blockade? Point out the differences in this respect between French and English practice.

4. Enumerate the acts which would amount to violation of blockade. What is the penalty for the offence?

Hints as to Reading.

The Law of Blockade is given in Hall, Part IV., Chapter VIII., and in Wheaton, Part IV., Chapter III. Manning deals with it historically in Book V., Chapters IX. and X. Halleck considers it in Chapter XXV., Twiss in Volume II., Chapter VI., and Woolsey in Part II., Chapter II., Section II. In the Letters of Historicus there are two letters on the subject.

CHAPTER VI.

Rights and Obligations as between Belligerent States and Neutral Individuals.

Unneutral Service.

A. The Nature of Unneutral Service.

A neutral individual is forbidden under penalty of the confiscation of his ship to perform certain ser-

vices for a belligerent. The chief acts thus forbidden are

(1) Transmitting military or naval signals or messages.

(2) Carrying certain classes of persons in the service of a belligerent, especially military or naval persons.

(3) Carrying certain kinds of despatches for a belligerent, especially military or naval despatches.

B. The Tests of Unneutral Service.

Acts of unneutral service stand on a different footing from the carriage of contraband, with which they are sometimes confounded. They are not matters of ordinary trade; but they amount to a definite entering into the service of a belligerent, though only in a limited manner and for a temporary purpose. In many cases it is difficult to draw the line between innocent and guilty acts. Two tests are applied,

(1) The Character of the Contract.

If the vessel is actually in the service of a belligerent, and under his control, it is condemned.

(2) The Knowledge of the Master.

If he knowingly performs certain acts which render to a belligerent a distinct service in matters relating to the war, his vessel becomes thereby liable to condemnation and capture.

The question whether mail bags should have

special immunities has been raised in recent times, and the tendency has been to relax in their favour the strict rules of search and capture; but no general usage on the subject has yet been formed.

C. The Penalty for Unneutral Service.

The distinction between unneutral service and carrying contraband is nowhere more clearly marked than in the nature of the penalty. In the case of contraband the ship is rarely confiscated, but the goods always, provided there is a belligerent destination. In the case of unneutral service

(1) The ship is invariably confiscated, as being engaged in the enemy's service.

(2) The destination of the vessel is wholly immaterial.

D. The Rule of War of 1756.

France, being at war with England in 1756, threw open its colonial trade to the Dutch as a temporary war measure. England captured and confiscated the Dutch ships and cargoes engaged in the trade on the ground that a neutral had no right in time of war to engage in a trade that was closed to it by a belligerent in time of peace. This was called The Rule of War of 1756; and there can be no doubt that it was a legitimate deduction from admitted principles. In the war with France which began in 1793 England extended the former rule, and prohibited trade which France had thrown open as a

permanent measure to all neutrals. It is doubtful how far this extension was lawful. The abolition by most civilized nations of the old restrictions on their colonial commerce has rendered the question of little practical importance.

Questions.

1. Distinguish between unneutral service and contraband trade.

2. Discuss the question whether a belligerent has a right to capture his enemy's ambassadors on board a neutral ship.

3. Under what circumstances may a neutral vessel be condemned for carrying the despatches of a belligerent?

4. What was the Rule of War of 1756? How was it afterwards extended? Discuss its legality in (*a*) its original, (*b*) its later form.

Hints as to Reading.

Hall deals with this subject under the title of *Analogues of Contraband* in Chapter VI. of Part IV. It is considered towards the end of Chapter III. of Part IV. of Wheaton. Dana's note on *Carrying Hostile Persons or Papers* is very valuable. Chapter IX. of Abdy's Kent will be found useful, and also the latter part of Chapter XXVIII. of Halleck. The letters on the *Trent* case in the letters of Historicus refer occasionally to portions of our present subject.

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